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THE LAW OF CONTRACTS

BY
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VOLUME V

FORMS

BY
CLARENCE M. LEWIS

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INTRODUCTION

It was early recognized in planning for the TREATISE ON THE LAW OF CONTRACTS which I have written, that it was desirable, if not essential, that a book of forms should form a part of the undertaking. I did not think it desirable, however, that I should personally undertake this part of the work. It seemed better that one having fuller access to the files of large city offices should be asked to prepare a volume of modern forms. The style of legal draftsmanship has changed greatly in recent years, gaining in conciseness and clearness. To secure the benefit of this improved draftsmanship and also to avoid the danger of presenting forms which had not survived the test of experience, it was necessary to obtain forms which, for the most part at least, had been in successful recent use.

Mr. Lewis, who has prepared this volume, has been in a position to obtain use of a great number of forms which fulfill these requisites, and I am glad to have the volume prepared by him associated with those which I wrote.

SAMUEL WILLISTON.

PREFACE

In response to a demand for a book of forms for use in connection with Professor Williston's great treatise on the Law of Contracts, his publishers deemed it advisable to have such a book prepared. As Professor Williston was unwilling to undertake the work and was of the opinion that it should be done by a lawyer in active practice, arrangements were made with the writer to prepare this book.

The book is submitted to the profession in the belief that it will be found a helpful collection of practical forms not to be found elsewhere. It has been prepared with a full realization of the difficulty and necessity of measuring up to the high standard set by Professor Williston and with the hope that it may serve as a useful supplement to his treatise.

In view of the form books now available, no attempt has been made to cover the whole field of ordinary forms. Emphasis has been placed on certain types of contracts and clauses that are not contained in the ordinary form books, but which are becoming more important to practicing lawyers in the newer and more complicated phases of commercial growth. For instance, contracts regulating industrial relations, concerning motion pictures, separation agreements and factors' agreements have been given prominence. Leases have been included because of the great importance of this form of contract.

An effort has been made to include as far as possible only forms and clauses based upon those which have been construed by the Courts or have been used in actual practice. Cases construing the contracts and clauses and from which many of the forms have been adapted are cited.

In preparing and editing the forms, certain principles have been observed. The designations "Party of the First Part" and "Party of the Second Part" have been eliminated wherever possible. For convenience in understanding the form (since names of parties have been omitted) the parties have been referred to in the opening of the contract by an approp-

riate designation such as "Landlord" and "Tenant," "Buyer" and "Seller," "Principal" and "Agent," and the same designation is used throughout. In practice it is better to use an actual designation—if the contract is between individuals, their names; if between corporations, abbreviations or descriptive appellations, because then the reader knows immediately to whom any paragraph of the contract refers without turning back to the beginning of the contract. Each paragraph has been numbered. Long clauses have been avoided, and, as far as possible, each clause refers to a separate matter.

At the risk of repetition certain usual clauses such as provisions for arbitration and liquidated damages have been included in the complete contracts. This obviates references to different parts of the book in the use of any one form.

Whenever it has been possible, the forms have been keyed to the text of Professor Williston's work on Contracts, thus affording ready reference to the substantive law on the subject.

A table of forms arranged according to the sections of Williston on Contracts will enable the reader of a section of the text to find the appropriate form.

Thanks are due to many members of the bar, too numerous to mention, for the use of forms prepared by them, and especially to my partners, Walter N. Seligsberg and Jay Leo Rothschild, without whose assistance and indulgence it would have been impossible to prepare this volume.

Comments, criticisms and suggestions will be appreciated.

CLARENCE M. LEWIS,
43 Cedar Street,
New York City.

New York, October 1, 1921.

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THE LAW OF CONTRACTS

ARBITRATION

Form of Arbitration Clause ¹ Recommended by Chamber of Commerce of the State of New York

Williston—Sections 227, 677, 767, 798, 1421, 1719 to 1723,
1925 to 1930.

Laws of New York, Chap. 275, Laws of 1920.

Spiritusfabriek v. Sugar Products Co., 230 N. Y. 261, 130
N. E. 288.

In re Division 132 of Amalgamated Street and Electrical Em-
ployee of America, 196 App. Div. 206, 188 N. Y. Supp. 353.

Matter of General Silk Importing Co. Inc., 198 App. Div.
16, 189 N. Y. Supp. 391;

Matter of Yeannakopoulos, 195 App. Div. 261, 186 N. Y.
Supp. 457;

Matter of Palmer & Pierce, Inc., 195 App. Div. 523, 186
N. Y. Supp. 369;

Re Shima & Co., 113 Misc. 612, 186 N. Y. Supp. 154.

In re Lowenthal, 191 N. Y. Supp. 282.

C. Itoh v. Boyer, 191 N. Y. Supp. 290.

“Any dispute arising under, out of, or in connection with, or
in relation to this contract, shall be submitted to arbitration
under the rules, for the time being, of the Committee on Arbi-
tration of the Chamber of Commerce of the State of New York.

“The validity, enforceability and interpretation of any of the
clauses of this contract shall be determined and governed by
the law of the State of New York.”

Arbitration Clause—

Matter of Shima & Co., Ltd., 113 Misc. 612, 186 N. Y. Supp.
154.

“Any differences arising between the parties to this contract

¹ The Arbitration Law of the State of New York (Chapter 275, Laws of 1920)
has been held inapplicable to suits in the federal courts. *Atlantic Fruit Company
v. Red Cross Line*, 276 Fed. 319.

do not invalidate same, but shall be settled by arbitration at New York, unless otherwise specified herein, and decision by such arbitration shall be final and binding on both parties."

Arbitration Clause—

Matter of Yeannakopoulos, 195 App. Div. 261, 186 N. Y. Supp. 457.

"Any dispute arising in the execution of this contract to be submitted to arbitration in New York."

Arbitration Clause—

Hudson Trading Co. v. Durand, 194 App. Div. 248, 185 N. Y. Supp. 187.

"All disputes and differences arising out of this contract shall be settled and finally determined in the City of New York, by arbitration in the following manner: Each party to this agreement shall appoint an arbitrator. If the two arbitrators so appointed cannot agree within a month after their appointment, they will select a third arbitrator. The decision in writing of the three arbitrators, or any two of them, shall be final and binding upon the parties therein, who shall conform to and abide by said decision. If either party fails to appoint his arbitrator within 14 days after notice in writing requiring him to do so, the arbitrator appointed by the other party shall act for both; his decision in writing shall be final and binding upon both parties, as if he had been appointed by consent, and both parties thereto shall conform to and comply therewith."

Arbitration Clause—

"In case of any dispute between the parties hereto as to their rights hereunder against each other the same shall be settled by arbitration, as follows: Either party may, by written notice to the other, appoint an arbitrator. Thereupon, within ten days after the giving of such notice, the other shall by written notice to the former appoint another arbitrator, and in default of such second appointment the arbitrator first appointed shall be sole arbitrator. When any two arbitrators have been appointed as aforesaid, they shall, if possible, agree upon a third arbitrator and shall appoint him by notice in writing,

signed by both of them in triplicate, one of which triplicate notices shall be given to each party hereto; but if ten days shall elapse after the appointment of the second arbitrator without notice of appointment of the third arbitrator being given as aforesaid, then either party hereto (or both) may in writing request the person who is at the time the Chairman or Acting Chairman of the Arbitration Committee of the Chamber of Commerce of New York City to appoint the third arbitrator, and upon appointment of the third arbitrator (whichever way appointed as aforesaid) the three arbitrators shall meet and shall give opportunity to each party hereto to present his case and witnesses, if any, in the presence of the other, and shall then make their award; and the award of the majority of the arbitrators shall be binding upon the parties hereto and judgment may be entered thereon in any court having jurisdiction. Such award shall include the fixing of the expense of the arbitration and assessment of same against either or both parties."

Form of Arbitration Agreement adopted by the Public Service Commission for the First District of the State of New York with the Interborough Rapid Transit Company of New York.

[Vol. IV (1913) Reports of Public Service Commission for the First District, State of New York.]

"CHAPTER VI

"ARBITRATION

"ARTICLE XXX. If the Commission or the Lessee shall desire to submit to arbitration any matter of difference arising under any provision of this contract in respect of which it is therein provided an arbitration may be had, then such matter of difference may be submitted to arbitration. Such arbitration shall be conducted as follows: Either the City, acting by the Commission, or the Lessee, may give written notice to the other that it requires the matter arising hereunder to be submitted to arbitration, and shall at the same time name a disinterested

person as an arbitrator, and accompany the notice by a written acceptance by the arbitrator of the nomination. Within thirty (30) days after the receipt of such notice, the party receiving the same shall name a disinterested person as an arbitrator, and give written notice of such nomination to the other party, the notice to be accompanied by a written acceptance by the arbitrator of the nomination. If the party to whom notice of arbitration is given shall not so nominate an arbitrator, who shall so accept, then the arbitrator named by the party giving the first notice shall be the sole arbitrator. The Commission and the Lessee shall upon the nomination of the second arbitrator select a third arbitrator; but if they fail to agree upon such third arbitrator within thirty (30) days after the date of the nomination of the second arbitrator nominated, the third arbitrator shall be nominated by the Chief Judge of the Court of Appeals of the State of New York; or if within fifteen (15) days after being requested by either the Commission or the Lessee to make such nomination, the said Chief Judge shall decline or fail to make a nomination, then an arbitrator shall be nominated, upon the request of the Commission or the Lessee and within a period of fifteen (15) days by any Associate Judge of said Court of Appeals in order of seniority; or if within such periods the said Judges shall decline or fail to make a nomination, then the third arbitrator shall be nominated by the President or Acting President for the time being of the Chamber of Commerce of the State of New York. The arbitrators shall hear the parties and their counsel or any statements or evidence which the parties or either of them desire to submit. The failure to give the notice provided for in Article XXIX shall not preclude the party failing to give such notice from setting up counterclaims growing out of or incident to the matter as to which the other party shall have given such notice. Either party may, upon two (2) days' notice (Saturdays, Sundays and Holidays excepted) to the other, bring on the subject in dispute for hearing before the arbitrators. Within thirty (30) days after such hearing commences, unless such time shall be extended for good cause by written order of the arbitrators or a majority of them, the arbitrators shall make their determination in writing in duplicate, one to be delivered to the Commission and the

other to the Lessee. In case any vacancy shall at any time occur by reason of the death, resignation or inability to serve of any arbitrator, his successor shall be nominated in the same manner and within the same times (during which times the other periods of time prescribed for or in the course of the arbitration shall be suspended) as above provided for in case of the original nomination of such arbitrator and in case the successor arbitrator shall not be nominated within such times the remaining arbitrator or arbitrators shall be the sole arbitrator or arbitrators. Any determination by a majority of the arbitrators shall be final and conclusive. Every such arbitrator shall be deemed to be employed both by the City and the Lessee. The fees and expenses of the arbitrators (including necessary expenses for stenographic and clerical services) and the expenses of the parties shall be assessed as the arbitrators consider equitable and as they direct in their award, but such assessments so made shall not be charged to cost of construction, cost of equipment or to operating expenses. Every such arbitrator shall, before proceeding to consider the matter, be sworn as nearly as may be in the same manner as referees in actions at law are required to be sworn.

“Provided, however, that if in any case, or for any reason an arbitration cannot validly be had as aforesaid, then the City or the Lessee, if in no way responsible for the failure of the arbitration, may bring such action, suit or proceeding as either of them may be advised for the purpose of determining any of the matters for which an arbitration is herein provided.”

Arbitration Provisions of United States Shipping Board Charter, Bare Boat Form

“Any dispute of law or fact arising under this “Bare Boat Form,” except as to the rate of hire and the compensation for actual or constructive total loss of the vessel and except as to matters expressly left to be decided by the United States Shipping Board, shall be referred to the arbitration of three persons, one appointed by the owner, one by the United States, and the third by the two so chosen. They may proceed in any manner determined by themselves, and their decision, or that of any

two of them, shall be final, and for the purpose of enforcing any award hereunder the agreement may be made a rule of court. Such arbitration shall be a condition precedent to the commencement of any action.”

Forms of Submission Suggested by the Chamber of Commerce of the State of New York

THE COMMITTEE ON ARBITRATION OF THE CHAMBER OF COMMERCE OF THE STATE OF NEW YORK.

<p>and</p>	}	Submission.
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A controversy, dispute or matter of difference between the undersigned having arisen and relating to a subject-matter the nature of which, briefly stated, is as follows: . . .

We do hereby voluntarily submit the same and all matters concerning the same to and who shall select a third arbitrator from the “LIST OF OFFICIAL ARBITRATORS,” compiled and established by the Committee on Arbitration of the Chamber of Commerce of the State of New York, for hearing and decision pursuant to the By-laws of the Chamber of Commerce of the State of New York, and the Rules and Regulations adopted by the Committee on Arbitration of the Chamber of Commerce, and pursuant to Chapter 17, Title VIII, of the Code of Civil Procedure of the State of New York,¹ and we agree to stand to, abide by and perform the decision, award, order, orders and judgment that may therein and thereupon be made under, pursuant and by virtue of, this submission.

And we do further agree that a judgment of the Supreme Court of the State of New York may be entered in any County in the State of New York thereon.

We do also in all respects waive any right to withdraw from or revoke this submission after the arbitrator or arbitrators accept their appointment hereunder, hereby expressly and

¹ Now Article 84, Civil Practice Act.

specifically waiving the provisions of Section 2383 of the Code of Civil Procedure.

THE COMMITTEE ON ARBITRATION OF THE CHAMBER OF COMMERCE OF THE STATE OF NEW YORK.

and	}	Submission.
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A controversy, dispute or matter of difference between the undersigned having arisen and relating to a subject-matter the nature of which, briefly stated, is as follows: . . .

We do hereby voluntarily submit the same and all matters concerning the same to as Arbitrator, selected by us from the "LIST OF OFFICIAL ARBITRATORS," compiled and established by the Committee on Arbitration of the Chamber of Commerce of the State of New York, for hearing and decision pursuant to the By-laws of the Chamber of Commerce of the State of New York, and the Rules and Regulations adopted by the Committee on Arbitration of the Chamber of Commerce, and pursuant to Chapter 17, Title VIII of the Code of Civil Procedure of the State of New York,¹ and we agree to stand to, abide by and perform the decision, award, order, orders and judgment that may therein and thereupon be made under, pursuant and by virtue of, this submission.

And we do further agree that a judgment of the Supreme Court of the State of New York, may be entered in any County in the State of New York thereon.

We do also in all respects waive any right to withdraw from or revoke this submission after the arbitrator or arbitrators accept their appointment hereunder, hereby expressly and specifically waiving the provisions of Section 2383 of the Code of Civil Procedure.²

¹ Now Article 84, Civil Practice Act.

² Now repealed because replaced by the Arbitration Law, Laws of 1920, Chap. 275.

THE COMMITTEE ON ARBITRATION OF THE CHAMBER
OF COMMERCE OF THE STATE OF NEW YORK.

and

} Submission.

A controversy, dispute or matter of difference between the undersigned having arisen and relating to a subject-matter the nature of which, briefly stated, is as follows:

We do hereby voluntarily submit the same and all matters concerning the same to as Committee on Arbitration of the Chamber of Commerce, or a quorum thereof, as Arbitrators selected by us for hearing and decision pursuant to the By-laws of the Chamber of Commerce of the State of New York, and the Rules and Regulations adopted by the Committee on Arbitration of the Chamber of Commerce, and pursuant to Chapter 17, Title VIII, of the Code of Civil Procedure of the State of New York, and we agree to stand to, abide by and perform the decision, award, order, orders and judgment that may therein and thereupon be made under, pursuant and by virtue of, this submission.

And we do further agree that a judgment of the Supreme Court of the State of New York may be entered in any County in the State of New York thereon.

We do also in all respects waive any right to withdraw from or revoke this submission after the arbitrator or arbitrators accept their appointment hereunder, hereby expressly and specifically waiving the provisions of Section 2383 of the Code of Civil Procedure. Dated, New York.

BUILDING CONTRACTS

Williston—Sections 63, 130, 372, 418, 422 n., 433, 493, 615, 642, 680, 688, 689, 699, 704, 724, 741, 785, 789, 794, 797, 798, 805, 811, 842, 848, 849, 875, 893, 1240-1243, 1341, 1347, 1363, 1423, 1460, 1475, 1480-1485, 1767, 1806, 1940, 1948, 1959, 1964, 1965, 1966, 1975, 1977.

THE STANDARD DOCUMENTS OF THE AMERICAN INSTITUTE OF ARCHITECTS

THE AMERICAN INSTITUTE OF ARCHITECTS ISSUES THE FOLLOWING STANDARD DOCUMENTS: A. FORM OF AGREEMENT AND GENERAL CONDITIONS OF THE CONTRACT, B. BOND OF SURETYSHIP, C. STANDARD FORM OF AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR, D. LETTER OF ACCEPTANCE OF SUBCONTRACTOR'S PROPOSAL. THE DOCUMENTS ARE PUBLISHED AND FOR SALE BY THE INSTITUTE AT ITS HEADQUARTERS, THE OCTAGON HOUSE, WASHINGTON, D. C., AND BY DEALERS IN ALL OF THE LARGE CITIES.

The Standard Documents have received the approval of the National Association of Builders' Exchanges, the National Association of Master Plumbers, the National Association of Sheet Metal Contractors of the United States, the National Electrical Contractors' Association of the United States, the National Association of Marble Dealers, the Building Granite Quarries Association, the Building Trades Employers' Association of the City of New York, and the Heating and Piping Contractors National Association.

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THE AMERICAN INSTITUTE OF ARCHITECTS

THE OCTAGON HOUSE, WASHINGTON, D. C.

NOTES ON THE STANDARD DOCUMENTS ¹

THE CONSTRUCTION OF THE DOCUMENTS

An Agreement, Drawings and Specifications are the necessary parts of a building contract. Many conditions of a general character may be placed at will in the Agreement or in the Specifications. It is, however, wise to assemble them in a single document and, since they have as much bearing on the Drawings as on the Specifications, and even more on the business relations of the contracting parties, they are properly called the "General Conditions of the Contract." As the Agreement, General Conditions, Drawings and Specifications are the constituent elements of the contract and are acknowledged as such in the Agreement,

they are correctly termed the Contract Documents. Statements made in any one of them are just as binding as if made in the Agreement.

The Institute's forms, although intended for use in actual practice, should also be regarded as a code of reference representing the judgment of the Institute as to what constitutes good practice and as such they may be drawn upon by architects in improving their own forms. Although the forms are suited for use in connection with a single or general contract, they are equally applicable to an operation conducted under separate contracts.

NOTES ON THE AGREEMENT

As the laws relative to the following matters vary in the several States, and as the statements made below are true only in a broad way, the provisions of the laws of the State in which the building is to be erected should be ascertained from counsel, and the details of the contract documents should be arranged in conformity therewith.

Date of the Agreement.

Agreements executed on Sunday are generally void by statute.

Payments for materials delivered but not incorporated in the work.

On page 2 the definite system of payment which was printed on the Cover of the second edition, is now printed in the body of the agreement and a blank line is left to permit the easy insertion, when desired, of a clause covering payments for materials delivered but not incorporated in the work.

Names of the Contracting Parties.

Ascertain and use the exact name

or legal title of the parties. In the case of an individual or a firm, the address of the place of business should follow the name.

If the best practice is to be observed, the name of each partner as well as that of the firm should be inserted at the place where the names of the contracting parties first appear in the Agreement. Thus, "John Brown, Richard Jones and William Robinson, trading as John Brown & Co." In this way the names of all the individuals who are to be made severally as well as jointly liable for the performance of the contract are indicated.

In the case of a corporation, use the exact title followed by a statement as to the place of incorporation, *e. g.*, "Palmer Construction Co., a corporation under the laws of the State of Delaware." In the case of a voluntary association (unless some state statute authorizes the association as such to enter into contracts in its associate

¹ These notes are not sponsored by the author. From a strictly legal view some of the comments are not technically accurate.

name) insert the names of the officers and some responsible members so that all become personally bound by their signatures.

Signatures of Contracting Parties.

See that the signatures agree exactly with the names of the parties as first written in the Agreement. In the case of a firm, the signature of the firm name by one of the partners, in nearly all cases, binds the firm and each of its members. Obviously, it does not bind special partners except to the extent of their interest. It does not bind the partners in case the contract be for something not within the scope of the firm's business.

On account of the trouble of securing the signatures of the various partners, it is usual to accept the firm name signed by one of them, and in that case the signature of a partnership should be the firm name, by....., the name of the general partner signing, but again, if the most rigorous practice is to be followed, the signature will consist of the firm name and of that of each of the partners.

The name of a corporation should be followed by the signature of the officer duly authorized to execute a contract, *e. g.*, "Palmer Construction Co., by Peter Palmer, President." The seal of the corporation must be attached or impressed and attested by the proper officer, *e. g.*, "Attest, Walter Palmer, Secretary."

In the case of a voluntary association the signatures of its officers and of a sufficient number of responsible individual members to insure the carrying out of the financial obligation assumed by the contract should be secured.

Authority to Execute a Contract.

(a) By an individual. There is ordinarily no legal bar to the execution by an individual of a contract for the employment of an architect or for the execution of work upon a building.

(b) By a business corporation. It is important to know—

1. That the corporation has the right to enter into the proposed contract.

2. That it has exercised that right by legal action.

3. That the officer executing the contract has been duly authorized so to act by the corporation.

It is common practice to assume that the Agreement, if signed by the president, sealed with the corporate seal and attested by the secretary, binds the corporation. Unless the signer's authority to sign contracts for the corporation is a matter of common knowledge, however, there should be attached to the Agreement a certificate showing that general power to sign is fully vested in the one signing or else there should be attached a special certificate such as the following:

At a meeting of the Board of Directors of the.....duly notified and held in.....on.....
.....19...., a quorum being present, it was

VOTED: That.....
the.....be and he is hereby authorized and directed in the name and on behalf of this corporation, and under its corporate seal, to execute and deliver a contract with..... for aat for the sum of \$....., said contract to be in such form and subject to such conditions as said..... shall see fit. And said..... is hereby further authorized and directed in the name and on behalf of this corporation and under its corporate seal, to execute and deliver to said Owner any bond or bonds he may see fit, to secure the performance of said contract by this corporation.

A True Copy.

Attest.....*Secretary.*

(c) By any authority assuming to expend public moneys. The validity of an agreement between such bodies and an architect for his services is so charged with danger that no architect

should enter into such an agreement except under advice of competent counsel.

Witnesses.

Witnesses at signing are not necessary. If there are witnesses there may be embarrassment in producing them in case of a contest, whereas, if there are none the signatures may be proved

by any competent evidence. Witnesses are of use only when one of the parties claims that what purports to be his signature is a forgery.

Seals.

The attachment of the seal is a necessary part of the legal execution of a contract by a corporation.

TITLE PAGE

TITLE AND LOCATION OF THE WORK:

NAME AND ADDRESS OF THE OWNER:

NAME AND ADDRESS OF THE ARCHITECT:

TITLES OF DOCUMENTS BOUND HEREWITH AND ENUMERATION OF DRAWINGS:

THE GENERAL CONDITIONS OF THE CONTRACT

STANDARD FORM OF THE AMERICAN INSTITUTE OF ARCHITECTS

The Standard Documents have received the approval— of the National Association of Builders' Exchanges, the National Association of Master Plumbers, the National Association of Sheet Metal Contractors of the United States, the National Electrical Contractors' Association of the United States, the National Association of Marble Dealers, the Building Granite Quarries Association, the Building Trades Employers' Association of the City of New York, and the Heating and Piping Contractors National Association.

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THE OCTAGON, WASHINGTON, D. C.

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Article 1. Principles and Definitions.—

- (a) The Contract Documents consist of the Agreement, the General Conditions of the Contract, the Drawings and Specifications, including all modifications thereof incorporated in the documents before their execution. These form the Contract.
- (b) The Owner, the Contractor and the Architect are those named as such in the Agreement. They are treated throughout the Contract Documents as if each were of the singular number and masculine gender.
- (c) The term Subcontractor, as employed herein, includes only those having a direct contract with the Contractor and it includes one who furnishes material worked to a special design according to the plans or specifications of this work, but does not include one who merely furnishes material not so worked.
- (d) Written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered mail to the last business address known to him who gives the notice.
- (e) The term "work" of the Contractor or Subcontractor includes labor or materials or both.
- (f) All time limits stated in the Contract Documents are of the essence of the contract.

(g) The law of the place of building shall govern the construction of this contract.

Art. 2. Execution, Correlation and Intent of Documents.—The Contract Documents shall be signed in duplicate by the Owner and Contractor. In case of failure to sign the General Conditions, Drawings or Specifications the Architect shall identify them.

The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intention of the documents is to include all labor and materials reasonably necessary for the proper execution of the work. It is not intended, however, that materials or work not covered by or properly inferable from any heading, branch, class or trade of the specifications shall be supplied unless distinctly so noted on the drawings. Materials or work described in words which so applied have a well-known technical or trade meaning shall be held to refer to such recognized standards.

Art. 3. Detail Drawings and Instructions.—The Architect shall furnish, with reasonable promptness, additional instructions, by means of drawings or otherwise, necessary for the proper execution of the work. All such drawings and instructions shall be consistent with the Contract Documents, true developments thereof, and reasonably inferable therefrom. The work shall be executed in conformity therewith and the Contractor shall do no work without proper drawings and instructions. In giving such additional instructions, the Architect shall have authority to make minor changes in the work, not involving extra cost, and not inconsistent with the purposes of the building.

The Contractor and the Architect, if either so requests, shall jointly prepare a schedule, subject to change from time to time in accordance with the progress of the work, fixing the dates at which the various detail drawings will be required, and the Architect shall furnish them in accordance with that schedule. Under like conditions, a schedule shall be prepared, fixing the dates for the submission of shop drawings, for the beginning of manufacture and installation of materials and for the completion of the various parts of the work.

Art. 4. Copies Furnished.—Unless otherwise provided in the Contract Documents the Architect will furnish to the Contractor, free of charge, all copies of drawings and specifications reasonably necessary for the execution of the work.

Art. 5. Shop Drawings.—The Contractor shall submit, with such promptness as to cause no delay in his own work or in that of any other contractor, two copies of all shop or setting drawings and schedules required for the work of the various trades and the Architect shall pass upon them with reasonable promptness. The Contractor shall make any corrections required by the Architect, file with him two corrected copies and furnish such other copies as may be needed. The Architect's approval of such drawings or schedules shall not relieve the Contractor from responsibility for deviations from drawings or specifications, unless he has in writing called the Architect's attention to such deviations at the time of submission, nor shall it relieve him from responsibility for errors of any sort in shop drawings or schedules.

Art. 6. Drawings and Specifications on the Work.—The Contractor shall keep one copy of all drawings and specifications on the work, in good order, available to the Architect and to his representatives.

Art. 7. Ownership of Drawings and Models.—All drawings, specifications and copies thereof furnished by the Architect are his property. They are not to be used on other work and, with the exception of the signed contract set, are to be returned to him on request, at the completion of the work. All models are the property of the Owner.

Art. 8. Samples.—The Contractor shall furnish for approval all samples as directed. The work shall be in accordance with approved samples.

Art. 9. The Architect's Status.—The Architect shall have general supervision and direction of the work. He is the agent of the Owner only to the extent provided in the Contract Documents and when in special instances he is authorized by the Owner so to act, and in such instances he shall, upon request, show the Contractor written authority. He has authority to stop the work whenever such stoppage may be necessary to insure the proper execution of the Contract.

As the Architect is, in the first instance, the interpreter of the conditions of the Contract and the judge of its performance, he shall side neither with the Owner nor with the Contractor, but shall use his powers under the contract to enforce its faithful performance by both.

In case of the termination of the employment of the Architect, the Owner shall appoint a capable and reputable Architect, whose status under the contract shall be that of the former Architect.

Art. 10. The Architect's Decisions.—The Architect shall, within a reasonable time, make decisions on all claims of the Owner or Contractor and on all other matters relating to the execution and progress of the work or the interpretation of the Contract Documents.

The Architect's decisions, in matters relating to artistic effect, shall be final, if within the terms of the Contract Documents.

Except as above or as otherwise expressly provided in these General Conditions or in the specifications, all the Architect's decisions are subject to arbitration.

Art. 11. Foreman, Supervision.—The Contractor shall keep on his work, during its progress, a competent foreman and any necessary assistants, all satisfactory to the Architect. The foreman shall not be changed except with the consent of the Architect, unless the foreman proves to be unsatisfactory to the Contractor and ceases to be in his employ. The foreman shall represent the Contractor in his absence and all directions given to him shall be as binding as if given to the Contractor. Important directions shall be confirmed in writing to the Contractor. Other directions shall be so confirmed on written request in each case.

The contractor shall give efficient supervision to the work, using his best skill and attention. He shall carefully study and compare all drawings, specifications and other instructions and shall at once report to the Architect any error, inconsistency or omission which he may discover.

Art. 12. Materials, Appliances, Employees.—Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, water, tools, equipment, light and power necessary for the execution of the work.

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of good quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

The Contractor shall not employ on the work any unfit person or anyone not skilled in the work assigned to him.

Art. 13. Inspection of Work.—The Owner, the Architect and their representatives shall at all times have access to the work wherever it is in preparation or progress and the Contractor shall provide proper facilities for such access and for inspection.

If the specifications, the Architect's instructions, laws, ordinances or any public authority require any work to be specially tested or approved, the Contractor shall give the Architect timely notice of its readiness for inspection, and if the inspection is by another authority than the Architect, of the date fixed for such inspection. Inspections by the Architect shall be promptly made. If any such work should be covered up without approval or consent of the Architect, it must, if required by the Architect, be uncovered for examination at the Contractor's expense.

Re-examination of questioned work may be ordered by the Architect. If such work be found in accordance with the contract, the Owner shall pay the cost of re-examination and replacement. If such work be found not in accordance with the contract, through the fault of the Contractor, the Contractor shall pay such cost, unless he shall show that the defect in the work was caused by another contractor, and in that event the Owner shall pay such cost.

Art. 14. Correction of Work Before Final Payment.—The Contractor shall promptly remove from the premises all materials condemned by the Architect as failing to conform to the Contract, whether incorporated in the work or not, and the Contractor shall promptly replace and re-execute his own work in accordance with the Contract and without expense to the Owner and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

If the Contractor does not remove such condemned work and materials within a reasonable time, fixed by written notice,

the Owner may remove them and may store the material at the expense of the Contractor. If the Contractor does not pay the expense of such removal within five days thereafter, the Owner may, upon ten days' written notice, sell such materials at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs and expenses that should have been borne by the Contractor.

Art. 15. Deductions for Uncorrected Work.—If the Architect and Owner deem it inexpedient to correct work injured or done not in accordance with the Contract, the difference in value together with a fair allowance for damages shall be deducted.

Art. 16. Correction of Work After Final Payment.—Neither the final certificate nor payment nor any provision in the Contract Documents shall relieve the Contractor of responsibility for faulty materials or workmanship and he shall remedy any defects due thereto and pay for any damage to other work resulting therefrom, which shall appear within a period of two years from the time of installation. The Owner shall give notice of observed defects with reasonable promptness. All questions arising under this Article shall be decided under Articles 10 and 45.

Art. 17. Protection of Work and Property.—The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect the Owner's property from injury arising in connection with this Contract. He shall make good any such damage or injury, except such as may be directly due to errors in the Contract Documents. He shall adequately protect adjacent property as provided by law and the Contract Documents.

Art. 18. Emergencies.—In an emergency affecting the safety of life or of the structure or of adjoining property, not considered by the Contractor as within the provisions of Article 17, then the Contractor, without special instruction or authorization from the Architect or Owner, is hereby permitted to act, at his discretion, to prevent such threatened loss or injury and he shall so act, without appeal, if so instructed or authorized. Any compensation claimed to be due to him therefor shall be determined under Articles 10 and 45 regardless of the limitations in Article 25 and in the second paragraph of Article 24.

Art. 19. Contractor's Liability Insurance.—The Contractor shall maintain such insurance as will protect him from claims under workmen's compensation acts and from any other claims for damages for personal injury, including death, which may arise from operations under this contract, whether such operations be by himself or by any subcontractor or anyone directly or indirectly employed by either of them. Certificates of such insurance shall be filed with the Owner, if he so require, and shall be subject to his approval for adequacy of protection.

Art. 20. Owner's Liability Insurance.—The Owner shall maintain such insurance as will protect him from his contingent liability for damages for personal injury, including death, which may arise from operations under this contract.

Art. 21. Fire Insurance.—The Owner shall effect and maintain fire insurance upon the entire structure on which the work of this contract is to be done and upon all materials, in or adjacent thereto and intended for use thereon, to at least eighty per cent of the insurable value thereof. The loss, if any, is to be made adjustable with and payable to the Owner as Trustee for whom it may concern.

All policies shall be open to inspection by the Contractor. If the Owner fails to show them on request or if he fails to effect or maintain insurance as above, the Contractor may insure his own interest and charge the cost thereof to the Owner. If the Contractor is damaged by failure of the Owner to maintain such insurance, he may recover under Art. 39.

If required in writing by any party in interest, the Owner as Trustee shall, upon the occurrence of loss, give bond for the proper performance of his duties. He shall deposit any money received from insurance in an account separate from all his other funds and he shall distribute it in accordance with such agreement as the parties in interest may reach, or under an award of arbitrators appointed, one by the Owner, another by joint action of the other parties in interest, all other procedure being in accordance with Art. 45. If after loss no special agreement is made, replacement of injured work shall be ordered under Art. 24.

The Trustee shall have power to adjust and settle any loss

with the insurers unless one of the contractors interested shall object in writing within three working days of the occurrence of loss and thereupon arbitrators shall be chosen as above. The Trustee shall in that case make settlement with the insurers in accordance with the directions of such arbitrators, who shall also, if distribution by arbitration is required, direct such distribution.

Art. 22. Guaranty Bonds.—The Owner shall have the right to require the Contractor to furnish bond covering the faithful performance of the contract and the payment of all obligations arising thereunder, in such form as the Owner may prescribe and with such sureties as he may approve. If such bond is required by instructions given previous to the receipt of bids, the premium shall be paid by the Contractor; if subsequent thereto, it shall be paid by the Owner.

Art. 23. Cash Allowances.—The Contractor shall include in the contract sum all allowances named in the Contract Documents and shall cause the work so covered to be done by such contractors and for such sums as the Architect may direct, the contract sum being adjusted in conformity therewith. The Contractor declares that the contract sum includes such sums for expenses and profit on account of cash allowances as he deems proper. No demand for expenses or profit other than those included in the contract sum shall be allowed. The Contractor shall not be required to employ for any such work persons against whom he has a reasonable objection.

Art. 24. Changes in the Work.—The Owner, without invalidating the contract, may make changes by altering, adding to or deducting from the work, the contract sum being adjusted accordingly. All such work shall be executed under the conditions of the original contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.

Except as provided in Articles 3, 9 and 18, no change shall be made unless in pursuance of a written order from the Owner signed or countersigned by the Architect, or a written order from the Architect stating that the Owner has authorized the change, and no claim for an addition to the contract sum shall be valid unless so ordered.

The value of any such change shall be determined in one or more of the following ways:

- (a) By estimate and acceptance in a lump sum.
- (b) By unit prices named in the contract or subsequently agreed upon.
- (c) By cost and percentage or by cost and a fixed fee.
- (d) If none of the above methods is agreed upon, the Contractor, provided he receive an order as above, shall proceed with the work, no appeal to arbitration being allowed from such order to proceed.

In cases (c) and (d), the Contractor shall keep and present in such form as the Architect may direct, a correct account of the net cost of labor and materials, together with vouchers. In any case, the Architect shall certify to the amount, including a reasonable profit, due to the Contractor. Pending final determination of value, payments on account of changes shall be made on the Architect's certificate.

Art. 25. Claims for extras.—If the Contractor claims that any instructions, by drawings or otherwise, involve extra cost under this contract, he shall give the Architect written notice thereof before proceeding to execute the work and, in any event, within two weeks of receiving such instructions, and the procedure shall then be as provided in Art. 24. No such claim shall be valid unless so made.

Art. 26. Applications for Payments.—The Contractor shall submit to the Architect an application for each payment and, if required, receipts or other vouchers showing his payments for materials and labor, including payments to subcontractors as required by Article 44.

If payments are made on valuation of work done, such application shall be submitted at least ten days before each payment falls due, and, if required, the Contractor shall, before the first application, submit to the Architect a schedule of values of the various parts of the work, including quantities, aggregating the total sum of the contract, divided so as to facilitate payments to subcontractors in accordance with Article 44 (e), made out in such form and, if required, supported by such evidence as to its correctness, as the Architect may direct. This schedule, when approved by the Architect

shall be used as a basis for certificates of payment, unless it be found to be in error. In applying for payments, the Contractor shall submit a statement based upon this schedule and, if required, itemized in such form and supported by such evidence as the Architect may direct, showing his right to the payment claimed.

Art. 27. Certificates and Payments.—If the Contractor has made application as above, the Architect shall, not later than the date when each payment falls due, issue to the Contractor a certificate for such amount as he decides to be properly due.

No certificate issued nor payment made to the Contractor, nor partial or entire use or occupancy of the work by the Owner shall be an acceptance of any work or materials not in accordance with this contract. The making and acceptance of the final payment shall constitute a waiver of all claims by the Owner, otherwise than under Articles 16 and 29 of these conditions or under requirement of the specifications, and of all claims by the Contractor, except those previously made and still unsettled.

Should the Owner fail to pay the sum named in any certificate of the Architect or in any award by arbitration, upon demand when due, the Contractor shall receive, in addition to the sum named in the certificate, interest thereon at the legal rate in force at the place of building.

Art. 28. Payments Withheld.—The Architect may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any certificate for payment to such extent as may be necessary to protect the Owner from loss on account of:

- (a) Defective work not remedied.
- (b) Claims filed or reasonable evidence indicating probable filing of claims.
- (c) Failure of the Contractor to make payments properly to subcontractors or for material or labor.
- (d) A reasonable doubt that the contract can be completed for the balance then unpaid.
- (e) Damage to another contractor under Article 40.

When all the above grounds are removed certificates shall at once be issued for amounts withheld because of them.

Art. 29. Liens.—Neither the final payment nor any part of

the retained percentage shall become due until the Contractor, if required, shall deliver to the Owner a complete release of all liens arising out of this contract, or receipts in full in lieu thereof and, if required in either case, an affidavit that so far as he has knowledge or information the releases and receipts include all the labor and material for which a lien could be filed; but the Contractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the Owner, to indemnify him against any claim by lien or otherwise. If any lien or claim remain unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such lien or claim, including all costs and a reasonable attorney's fee.

Art. 30. Permits and Regulations.—The Contractor shall obtain and pay for all permits and licenses, but not permanent easements, and shall give all notices, pay all fees and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the drawings and specifications are at variance therewith, he shall promptly notify the Architect in writing, and any necessary changes shall be adjusted under Article 24. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Architect, he shall bear all costs arising therefrom.

Art. 31. Royalties and Patents.—The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when the product of a particular manufacturer or manufacturers is specified, but if the Contractor has information that the article specified is an infringement of a patent he shall be responsible for such loss unless he promptly gives such information to the Architect or Owner.

Art. 32. Use of Premises.—The Contractor shall confine his apparatus, the storage of materials and the operations of his workmen to limits indicated by law, ordinances, permits or directions of the Architect and shall not unreasonably encumber the premises with his materials.

The Contractor shall not load or permit any part of the structure to be loaded with a weight that will endanger its safety.

The Contractor shall enforce the Architect's instructions regarding signs, advertisements, fires and smoking.

Art. 33. Cleaning up.—The Contractor shall at all times keep the premises free from accumulations of waste material or rubbish caused by his employees or work and at the completion of the work he shall remove all his rubbish from and about the building and all his tools, scaffolding and surplus materials and shall leave his work "broom clean" or its equivalent, unless more exactly specified. In case of dispute the Owner may remove the rubbish and charge the cost to the several contractors as the Architect shall determine to be just.

Art. 34. Cutting, Patching and Digging.—The Contractor shall do all cutting, fitting or patching of his work that may be required to make its several parts come together properly and fit it to receive or be received by work of other contractors shown upon, or reasonably implied by, the Drawings and Specifications for the completed structure and he shall make good after them, as the Architect may direct.

Any cost caused by defective or ill-timed work shall be borne by the party responsible therefor.

The Contractor shall not endanger any work by cutting, digging or otherwise and shall not cut or alter the work of any other contractor save with the consent of the Architect.

Art. 35. Delays.—If the Contractor be delayed in the completion of the work by any act or neglect of the Owner or the Architect, or of any employee of either, or by any other contractor employed by the Owner, or by changes ordered in the work, or by strikes, lockouts, fire, unusual delay by common carriers, unavoidable casualties or any causes beyond the Contractor's control, or by delay authorized by the Architect pending arbitration, or by any cause which the Architect shall decide to justify the delay, then the time of completion shall be extended for such reasonable time as the Architect may decide.

No such extension shall be made for delay occurring more than seven days before claim therefor is made in writing to the

Architect. In the case of a continuing cause of delay, only one claim is necessary.

If no schedule is made under Art. 3, no claim for delay shall be allowed on account of failure to furnish drawings until two weeks after demand for such drawings and not then unless such claim be reasonable.

This article does not exclude the recovery of damages for delay by either party under Article 39 or other provisions in the contract documents.

Art. 36. Owner's Right to Do Work.—If the Contractor should neglect to prosecute the work properly or fail to perform any provision of this contract, the Owner, after three days' written notice to the Contractor, may, without prejudice to any other remedy he may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor; provided, however, that the Architect shall approve both such action and the amount charged to the Contractor.

Art. 37. Owner's Right to Terminate Contract.—If the Contractor should be adjudged a bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he should, except in cases recited in Article 35, persistently or repeatedly refuse or fail to supply enough properly skilled workmen or proper materials, or if he should fail to make prompt payment to subcontractors or for material or labor, or persistently disregard laws, ordinances or the instructions of the Architect, or otherwise be guilty of a substantial violation of any provision of the contract, then the Owner, upon the certificate of the Architect that sufficient cause exists to justify such action, may, without prejudice to any other right or remedy and after giving the Contractor seven days' written notice, terminate the employment of the Contractor and take possession of the premises and of all materials, tools and appliances thereon and finish the work by whatever method he may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price shall exceed the expense of finishing the work, including compensa-

tion to the Architect for his additional services, such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the Owner. The expense incurred by the Owner as herein provided, and the damage incurred through the Contractor's fault, shall be certified by the Architect.

Art. 38. Contractor's Right to Stop Work or Terminate Contract.—If the work should be stopped under an order of any court, or other public authority, for a period of three months, through no act or fault of the Contractor or of any one employed by him, or if the Owner should fail to pay to the Contractor, within seven days of its maturity and presentation, any sum certified by the Architect or awarded by arbitrators, then the Contractor may, upon three days' written notice to the Owner and the Architect, stop work or terminate this contract and recover from the Owner payment for all work executed and any loss sustained upon any plant or material and reasonable profit and damages.

Art. 39. Damages.—If either party to this contract should suffer damage in any manner because of any wrongful act or neglect of the other party or of any one employed by him, then he shall be reimbursed by the other party for such damage.

Claims under this clause shall be made in writing to the party liable within a reasonable time of the first observance of such damage and not later than the time of final payment, except in case of claims under Article 16, and shall be adjusted by agreement or arbitration.

Art. 40. Mutual Responsibility of Contractors.—Should the Contractor cause damage to any other contractor on the work, the Contractor agrees, upon due notice, to settle with such contractor by agreement or arbitration, if he will so settle. If such other contractor sues the Owner on account of any damage alleged to have been so sustained, the Owner shall notify the Contractor, who shall defend such proceedings at the Owner's expense and, if any judgment against the Owner arise therefrom, the Contractor shall pay or satisfy it and pay all costs incurred by the Owner.

Art. 41. Separate Contracts.—The Owner reserves the right to let other contracts in connection with this work. The Con-

tractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate his work with theirs.

If any part of the Contractor's work depends for proper execution or results upon the work of any other contractor, the Contractor shall inspect and promptly report to the Architect any defects in such work that render it unsuitable for such proper execution and results. His failure so to inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of his work, except as to defects which may develop in the other contractor's work after the execution of his work.

To insure the proper execution of his subsequent work the Contractor shall measure work already in place and shall at once report to the Architect any discrepancy between the executed work and the drawings.

Art. 42. Assignment.—Neither party to the Contract shall assign the contract without the written consent of the other, nor shall the Contractor assign any moneys due or to become due to him hereunder, without the previous written consent of the Owner.

Art. 43. Subcontracts.—The Contractor shall, as soon as practicable after the signature of the contract, notify the Architect in writing of the names of subcontractors proposed for the principal parts of the work and for such others as the Architect may direct and shall not employ any that the Architect may within a reasonable time object to as incompetent or unfit.

If the Contractor has submitted before signing the contract a list of subcontractors and the change of any name on such list is required or permitted after signature of agreement, the contract price shall be increased or diminished by the difference between the two bids.

The Architect shall, on request, furnish to any subcontractor, wherever practicable, evidence of the amounts certified to on his account.

The Contractor agrees that he is as fully responsible to the Owner for the acts and omissions of his subcontractors and of

persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

Nothing contained in the contract documents shall create any contractual relation between any subcontractor and the Owner.

Art. 44. Relations of Contractor and Subcontractor.—The Contractor agrees to bind every subcontractor and every subcontractor agrees to be bound, by the terms of the General Conditions, Drawings and Specifications, as far as applicable to his work, including the following provisions of this Article, unless specifically noted to the contrary in a subcontract approved in writing as adequate by the Owner or Architect. This does not apply to minor subcontracts.

The Subcontractor agrees—

- (a) To be bound to the Contractor by the terms of the General Conditions, Drawings and Specifications and to assume toward him all the obligations and responsibilities that he, by those documents, assumes toward the Owner.
- (b) To submit to the Contractor applications for payment in such reasonable time as to enable the Contractor to apply for payment under Article 26 of the General Conditions.
- (c) To make all claims for extras, for extensions of time and for damages for delays or otherwise, to the Contractor in the manner provided in the General Conditions for like claims by the Contractor upon the Owner, except that the time for making claims for extra cost as under Article 25 of the General Conditions is one week.

The Contractor agrees—

- (d) To be bound to the Subcontractor by all the obligations that the Owner assumes to the Contractor under the General Conditions, Drawings and Specifications and by all the provisions thereof affording remedies and redress to the Contractor from the Owner.
- (e) To pay the Subcontractor, upon the issuance of certificates, if issued under the schedule of values described in

Article 26 of the General Conditions, the amount allowed to the Contractor on account of the Subcontractor's work to the extent of the Subcontractor's interest therein.

- (f) To pay the Subcontractor, upon the issuance of certificates, if issued otherwise than as in (e), so that at all times his total payments shall be as large in proportion to the value of the work done by him as the total amount certified to the Contractor is to the value of the work done by him.
- (g) To pay the Subcontractor to such extent as may be provided by the Contract Documents or the subcontract, if either of these provides for earlier or larger payments than those above.
- (h) To pay the Subcontractor on demand for his work or materials as far as executed and fixed in place, less the retained percentage, at the time the certificate should issue, even though the Architect fails to issue it for any cause not the fault of the Subcontractor.
- (j) To pay the Subcontractor a just share of any fire insurance money received by him, the Contractor, under Article 21 of the General Conditions.
- (k) To make no demand for liquidated damages or penalty for delay in any sum in excess of such amount as may be specifically named in the subcontract.
- (l) That no claim for services rendered or materials furnished by the Contractor to the Subcontractor shall be valid unless written notice thereof is given by the Contractor to the Subcontractor during the first ten days of the calendar month following that in which the claim originated.
- (m) To give the Subcontractor an opportunity to be present and to submit evidence in any arbitration involving his rights.
- (n) To name as arbitrator under Article 45 of the General Conditions the person nominated by the Subcontractor, if the sole cause of dispute is the work, materials, rights or responsibilities of the Subcontractor; or, if of the Subcontractor and any other

subcontractor jointly, to name as such arbitrator the person upon whom they agree.

The Contractor and the Subcontractor agree that—

- (o) In the matter of arbitration, their rights and obligations and all procedure shall be analogous to those set forth in Article 45 of the General Conditions.

Nothing in this Article shall create any obligation on the part of the Owner to pay to or to see to the payment of any sums to any Subcontractor.

Art. 45. Arbitration.—Subject to the provisions of Article 10, all questions in dispute under this contract shall be submitted to arbitration at the choice of either party to the dispute. The Contractor agrees to push the work vigorously during arbitration proceedings.

The demand for arbitration shall be filed in writing with the Architect, in the case of an appeal from his decision, within ten days of its receipt and in any other case within a reasonable time after cause thereof and in no case later than the time of final payment, except as to questions arising under Article 16. If the Architect fails to make a decision within a reasonable time, an appeal to arbitration may be taken as if his decision had been rendered against the party appealing.

No one shall be nominated or act as an arbitrator who is in any way financially interested in this contract or in the business affairs or either the Owner, Contractor or Architect.

The general procedure shall conform to the laws of the State in which the work is to be erected. Unless otherwise provided by such laws, the parties may agree upon one arbitrator; otherwise there shall be three, one named, in writing, by each party to this contract, to the other party and to the Architect, and the third chosen by these two arbitrators, or if they fail to select a third within ten days, then he shall be chosen by the presiding officer of the Bar Association nearest to the location of the work. Should the party demanding arbitration fail to name an arbitrator within ten days of his demand, his right to arbitration shall lapse. Should the other party fail to choose an arbitrator within said ten days, then such presiding officer shall appoint such arbitrator. Should either party refuse or neglect to supply the arbitrators with any papers or infor-

mation demanded in writing, the arbitrators are empowered by both parties to proceed *ex parte*.

The arbitrators shall act with promptness. If there be one arbitrator his decision shall be binding; if three the decision of any two shall be binding. Such decision shall be a condition precedent to any right of legal action, and whenever permitted by law it may be filed in Court to carry it into effect.

The arbitrators, if they deem that the case demands it, are authorized to award to the party whose contention is sustained such sums as they shall deem proper for the time, expense and trouble incident to the appeal and, if the appeal was taken without reasonable cause, damages for delay. The arbitrators shall fix their own compensation, unless otherwise provided by agreement, and shall assess the costs and charges of the arbitration upon either or both parties.

The award of the arbitrators must be in writing and, if in writing, it shall not be open to objection on account of the form of the proceedings or the award, unless otherwise provided by the laws of the State in which the work is to be erected.

In the event of such laws providing on any matter covered by this article otherwise than as hereinbefore specified, the method of procedure throughout and the legal effect of the award shall be wholly in accordance with the said State laws, it being intended hereby to lay down a principle of action to be followed, leaving its local application to be adapted to the legal requirements of the place in which the work is to be erected.

THE STANDARD FORM OF BOND

FOR USE IN CONNECTION WITH THE THIRD EDITION OF THE STANDARD FORM OF AGREEMENT AND GENERAL CONDITIONS OF THE CONTRACT

This form has been approved by the National Association of Builders' Exchanges, the National Association of Master Plumbers, the National Association of Sheet Metal Contractors of the United States, the National Electrical Contractors' Association of the United States, the National Association of Marble Dealers, and the Heating and Piping Contractors' National Association.

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KNOW ALL MEN: That we

(Here insert the name and address or legal title of the Contractor.)

hereinafter called the Principal, and

(Here insert the name and address or legal title of one or more sureties).

. and

. and

hereinafter called the Surety or Sureties, are held and firmly bound unto

(Here insert the name and address or legal title of the Owner.)

hereinafter called the Owner, in the sum of

.

.

. (\$)

for the payment whereof the Principal and the Surety or Sureties bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly, by these presents.

Whereas, the Principal has, by means of a written Agreement, dated

. entered into a contract with the Owner for

a copy of which Agreement is by reference made a part hereof;

Now, Therefore, the Condition of this Obligation is such that if the Principal shall faithfully perform the Contract on his part, and satisfy all claims and demands, incurred for the same, and shall fully indemnify and save harmless the Owner from all cost and damage which he may suffer by reason of failure so to do, and shall fully reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any such default, and shall pay all persons who have contracts directly with the Principal for labor or materials, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Provided, however, that no suit, action or proceeding by reason of any default whatever shall be brought on this Bond after months from the day on which the final payment under the Contract falls due.

And Provided, that any alterations which may be made in

the terms of the Contract, or in the work to be done under it, or the giving by the Owner of any extension of time for the performance of the Contract, or any other forbearance on the part of either the Owner or the Principal to the other shall not in any way release the Principal and the Surety or Sureties, or either or any of them, their heirs, executors, administrators, successors or assigns from their liability hereunder, notice to the Surety or Sureties of any such alteration, extension or forbearance being hereby waived.

Signed and Sealed this.....day of.....
19....

In Presence of

.....	} (SEAL)
.....		as to
.....	} (SEAL)
.....		as to
.....	} (SEAL)
.....		as to
.....	} (SEAL)
.....		as to
.....	} (SEAL)
.....		as to
.....	} (SEAL)
.....		as to

THE STANDARD FORM OF AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR

FOR USE IN CONNECTION WITH THE THIRD EDITION OF THE STANDARD FORM OF AGREEMENT AND GENERAL CONDITIONS OF THE CONTRACT

This form has been approved by the National Association of Builders' Exchanges, the National Association of Master Plumbers, the National Association of Sheet Metal Contractors of the United States, the National Electrical Contractors' Association of the United States, the National Association of Marble Dealers, and the Heating and Piping Contractors National Association.

THIS AGREEMENT, made this day of
..... 19.... by and between here-
inafter called the Subcontractor and
hereinafter called the Contractor.

WITNESSETH, That the Subcontractor and Contractor for
the considerations hereinafter named agree as follows:

Section 1. The Subcontractor agrees to furnish all material
and perform all work as described in Section 2 hereof for.....
(Here name the kind of building.)

.....
for.....
(Here insert the name of the Owner.)

.....
hereinafter called the Owner, at.....
(Here insert the location of the work.)

.....
in accordance with the General Conditions of the Contract
between the Owner and the Contractor, and in accordance
with the Drawings and the Specifications prepared by.....
..... hereinafter called the Architect, all of which
General Conditions, Drawings and Specifications signed by
the parties thereto or identified by the Architect, form a part
of a Contract between the Contractor and the Owner dated
....., 19.., and hereby become a part of this
Contract.

Section 2. The Subcontractor and the Contractor agree
that the materials to be furnished and work to be done by the
Subcontractor are

(Here insert a precise description of the work, preferably by reference to the
numbers of the Drawings and the pages of the Specifications.)

Section 3. The Subcontractor agrees to complete the several
portions and the whole of the work herein sublet by the time
or times following:

(Here insert the date or dates and if there be liquidated damages state them.)

Section 4. The Contractor agrees to pay the Subcontractor
for the performance of his work the sum of
..... (\$.....)
in current funds, subject to additions and deductions for
changes as may be agreed upon, and to make payments on
account thereof in accordance with Section 5 hereof.

Section 5. The Contractor and Subcontractor agree to be bound by the terms of the General Conditions, Drawings and Specifications as far as applicable to this subcontract, and also by the following provisions:

The Subcontractor agrees:

(a) To be bound to the Contractor by the terms of the General Conditions, Drawings and Specifications, and to assume toward him all the obligations and responsibilities that he, by those documents, assumes toward the Owner.

(b) To submit to the Contractor applications for payment in such reasonable time as to enable the Contractor to apply for payment under his contract.

(c) To make all claims for extras, for extensions of time and for damages for delays or otherwise, to the Contractor in the manner provided in the General Conditions for like claims by the Contractor upon the Owner, except that the time for making claims for extra cost is one week.

The Contractor agrees.

(d) To be bound to the Subcontractor by all the obligations that the Owner assumes to the Contractor under the General Conditions, Drawings and Specifications, and by all the provisions thereof affording remedies and redress to the Contractor from the Owner.

(e) To pay the Subcontractor, upon the issuance of certificates, if issued under a schedule of values, the amount allowed to the Contractor on account of the Subcontractor's work to the extent of the Subcontractor's interest therein.

(f) To pay the Subcontractor, upon the issuance of certificates, if issued otherwise than as in (e), so that at all times his total payments shall be as large in proportion to the value of the work done by him as the total amount certified to the Contractor is to the value of the work done by him.

(g) To pay the Subcontractor to such extent as may be provided by the Contract Documents or the Subcontracts, if either of these provides for earlier or larger payments than the above.

(h) To pay the Subcontractor on demand for his work or materials as far as executed and fixed in place, less the retained percentage, at the time the certificate should issue, even though the Architect fails to issue it for any cause not the fault of the Subcontractor.

(j) To pay the Subcontractor a just share of any fire insurance money received by him, the Contractor, under the General Conditions.

(k) To make no demand for liquidated damages or penalty for delay in any sum in excess of such amount as may be specifically named in the Subcontract.

(l) That no claim for services rendered or materials furnished by the Contractor to the Subcontractor shall be valid unless written notice thereof is given by the Contractor to the Subcontractor during the first ten days of the calendar month following that in which the claim originated.

(m) To give the Subcontractor an opportunity to be present and to submit evidence in any arbitration involving his rights.

(n) To name as arbitrator under the General Conditions, the person nominated by the Subcontractor if the sole cause of dispute is the work, materials, rights or responsibilities of the Subcontractor; or, if of the Subcontractor and any other Subcontractor jointly, to name as such arbitrator the person upon whom they agree.

The Contractor and the Sub-contractor agree that:

(o) In the matter of arbitration, their rights and obligations and all procedure shall be analogous to those

set forth in the General Conditions.

Nothing herein shall create any obligation on the part of the Owner to pay or to see to the payment of any sums to any Subcontractor.

Section 6.

AGREEMENT BETWEEN

.....Subcontractor
.....Contractor
.....Owner
.....Architect
Contract Price \$.....

Finally.—The Subcontractor and Contractor, for themselves, their heirs, successors, executors, administrators and assigns, do hereby agree to the full performance of the covenants herein contained.

IN WITNESS WHEREOF they have hereunto set their hands the day and date first above written.

In Presence of

.....
Subcontractor.
.....
Contractor

STANDARD FORM OF ACCEPTANCE OF SUBCONTRACTOR'S PROPOSAL

FOR USE IN CONNECTION WITH THE THIRD EDITION OF THE STANDARD FORM OF AGREEMENT AND GENERAL CONDITIONS OF THE CONTRACT

This form has been approved by the National Association of Builders' Exchanges, the National Association of Master Plumbers, the National Association of Sheet Metal Contractors of the United States, the National Electrical Contractors' Association of the United States, the National Association of Marble Dealers, and the Heating and Piping Contractors National Association, the Building Trades Employers' Association of the City of New York.

Dear Sir: Having entered into a contract with.....
 (Here insert the name and address or corporate title of the Owner.)
 for the erection of.....
 (Here insert the kind of work and the place at which it is to be erected.)
 in accordance with plans and specifications prepared by.....
 (Here insert the name and address of the Architect.)
 and in accordance with the General Conditions of the Contract
 prefixed to the specifications, the undersigned hereby accepts
 your proposal of.....
 (Here insert date.)
 to provide all the materials and do all the work of.....
 (Here insert the kind of work to be done, as plumbing, roofing, etc., accurately
 describing by number, page, etc., the drawings and specifications governing such
 work.)

The Undersigned agrees to pay you in current funds for the
 faithful performance of the subcontract established by this
 acceptance of your proposal the sum of.....
(\$.....)

Our relations in respect of this subcontract are to be governed
 by the plans and specifications named above, by the General
 Conditions of the Contract as far as applicable to the work thus
 sublet and especially by Article 44 of those conditions printed
 on the reverse hereof.

Very truly yours,

Article 44 of the General Conditions of the Contract

Relations of Contractor and Subcontractor.—The Contractor
 agrees to bind every Subcontractor and every Subcontractor
 agrees to be bound, by the terms of the General Conditions,
 Drawings and Specifications, as far as applicable to his work,
 including the following provisions of this Article, unless specif-
 ically noted to the contrary in a subcontract approved in writ-
 ing as adequate by the Owner or Architect. This does not apply
 to minor subcontracts.

The Subcontractor agrees:

(a) To be bound to the Contractor
 by the terms of the General Conditions,
 Drawings and Specifications, and to
 assume toward him all the obligations

and responsibilities that he, by those
 documents, assumes toward the Owner.

(b) To submit to the Contractor
 applications for payment in such rea-
 sonable time as to enable the Con-

tractor to apply for payment under Article 26 of the General Conditions.

(c) To make all claims for extras, for extensions of time and for damages for delays or otherwise, to the Contractor in the manner provided in the General Conditions for like claims by the Contractor upon the Owner, except that the time for making claims for extra cost as under Article 25 of the General Conditions, is one week.

The Contractor agrees:

(d) To be bound to the Subcontractor by all the obligations that the Owner assumes to the Contractor under the General Conditions, Drawings and Specifications, and by all the provisions thereof affording remedies and redress to the Contractor from the Owner.

(e) To pay the Subcontractor, upon the issuance of certificates, if issued under the schedule of values described in Article 26 of the General Conditions, the amount allowed to the Contractor on account of the Subcontractor's work to the extent of the Subcontractor's interest therein.

(f) To pay the Subcontractor, upon the issuance of certificates, if issued otherwise than as in (e), so that at all times his total payments shall be as large in proportion to the value of the work done by him as the total amount certified to the Contractor is to the value of the work done by him.

(g) To pay the Subcontractor to such extent as may be provided by the Contract Documents or the subcontract, if either of these provides for earlier or larger payments than the above.

(h) To pay the Subcontractor on

demand for his work or materials as far as executed and fixed in place, less the retained percentage, at the time the certificate should issue, even though the Architect fails to issue it for any cause not the fault of the Subcontractor.

(j) To pay the Subcontractor a just share of any fire insurance money received by him, the Contractor, under Article 21 of the General Conditions.

(k) To make no demand for liquidated damages or penalty for delay in any sum in excess of such amount as may be specifically named in the subcontract.

(l) That no claim for services rendered or materials furnished by the Contractor to the Subcontractor shall be valid unless written notice thereof is given by the Contractor to the Subcontractor during the first ten days of the calendar month following that in which the claim originated.

(m) To give the Subcontractor an opportunity to be present and to submit evidence in any arbitration involving his rights.

(n) To name as arbitrator under Article 45 of the General Conditions, the person nominated by the Subcontractor if the sole cause of dispute is the work, materials, rights or responsibilities of the Subcontractor; or, if of the Subcontractor and any other subcontractor jointly, to name as such arbitrator the person upon whom they agree.

The Contractor and the Subcontractor agree that—

(o) In the matter of arbitration, their rights and obligations and all procedure shall be analogous to those set forth in Article 45 of the General Conditions.

Nothing in this Article shall create any obligation on the part of the Owner to pay to or to see to the payment of any sums to any subcontractor.

The Subcontractor entering into this agreement should be sure that not merely the above Article 44, but the full text of

the General Conditions of the Contract as signed by the Owner and Contractor is known to him, since such full text, though not herein repeated, is binding on him.

A FORM OF AGREEMENT BETWEEN CONTRACTOR AND OWNER

ISSUED BY THE AMERICAN INSTITUTE OF ARCHITECTS FOR USE WHEN THE COST OF
THE WORK PLUS A FEE FORMS THE BASIS OF PAYMENT

FIRST EDITION—COPYRIGHT 1920 BY THE AMERICAN INSTITUTE OF ARCHITECTS,
WASHINGTON, D. C.

THIS FORM IS TO BE USED ONLY WITH THE INSTITUTE'S STANDARD GENERAL CONDITIONS OF THE CONTRACT, AND IT SHOULD NOT BE USED WITHOUT CAREFUL STUDY OF ITS ACCOMPANYING "CIRCULAR OF INFORMATION."

THIS AGREEMENT made the
day of..... in the year nineteen hundred and
..... by and between
.....
hereinafter called the Contractor, and.....
.....
.....hereinafter called the Owner,
WITNESSETH, that whereas the Owner intends to erect.....
.....

Now, THEREFORE, the Contractor and the Owner, for the considerations hereinafter named, agree as follows:

Article 1. The Work to be Done and the Documents Forming the Contract

The Contractor agrees to provide all the labor and materials and to do all things necessary for the proper construction and completion of the work shown and described on Drawings bearing the title..... and numbered..... and in Specifications bearing the same title, the pages of which are numbered..... The said Drawings and Specifications and the General Conditions of the Contract consisting of Articles numbered one to..... together with this Agreement, constitute the Contract; the Drawings, Specifications and General Con-

ditions being as fully a part thereof and hereto attached or herein repeated. If anything in the said General Conditions is inconsistent with this Agreement, the Agreement shall govern.

The said documents have been prepared by..... therein and hereinafter called the Architect.

Article 2. Changes in the Work

The Owner, through the Architect, may from time to time, by written instructions or drawings issued to the Contractor, make changes in the above-named Drawings and Specifications, issue additional instructions, require additional work or direct the omission of work previously ordered, and the provisions of this contract shall apply to all such changes, modifications and additions with the same effect as if they were embodied in the original Drawings and Specifications. Since the cost of all such changes is to merge in the final cost of the work, Articles 24 and 25 of the General Conditions of the Contract are annulled, unless elsewhere especially made applicable.

Article 3. The Contractor's Duties and Status .

The Contractor recognizes the relations of trust and confidence established between him and the Owner by this Agreement. He covenants with the Owner to furnish his best skill and judgment and to coöperate with the Architect in forwarding the interests of the Owner. He agrees to furnish efficient business administration and superintendence and to use every effort to keep upon the work at all times an adequate supply of workmen and materials, and to secure its execution in the best and soundest way and in the most expeditious and economical manner consistent with the interests of the Owner.

Article 4. Fee for Services

In consideration of the performance of the contract, the Owner agrees to pay the Contractor, in current funds, as compensation for his services hereunder..... (\$.....) which shall be paid as follows:.....

Article 5. Costs to be Reimbursed

The Owner agrees to reimburse the Contractor in current funds all costs necessarily incurred for the proper prosecution of the work and paid directly by the Contractor, such costs to include the following items, and to be at rates not higher than the standard paid in the locality of the work except with prior consent of the Owner:

(a) All labor directly on the Contractor's pay roll.

(b) Salaries of Contractor's Employees stationed at the field office, in whatever capacity employed. Employees engaged, at shops or on the road, in expediting the production or transportation of material, shall be considered as stationed at the field office and their salaries paid for such part of their time as is employed on this work.

(c) The proportion of transportation, traveling and hotel expenses of the Contractor or of his officers or employees incurred in discharge of duties connected with this work.

(d) All expenses incurred for transportation to and from the work of the force required for its prosecution.

(e) Permit fees, royalties, damages for infringement of patents, and costs of defending suits therefor and for deposits lost for causes other than the Contractor's negligence.

(f) Losses and expenses, not compensated by insurance or otherwise, sustained by the Contractor in connection with the work, provided they have resulted from causes other than the fault or neglect of the Contractor. Such losses shall include settlements made with the written consent and approval of the Owner. No such losses and expenses shall be included in the cost of the work for the purpose of determining the Contractor's fee, but if, after a loss from fire, flood or similar cause not due to the fault or neglect of the Contractor, he be put in charge of reconstruction, he shall be paid for his services a fee proportionate to that named in Article 4 hereof.

(g) Minor expenses, such as telegrams, telephone service, expressage, and similar petty cash items.

(h) Cost of hand tools, not owned by the workmen, canvas and tarpaulins, consumed in the prosecution of the work, and depreciation on such tools, canvas and tarpaulins used but not

consumed and which shall remain the property of the Contractor.

Article 6. Costs Not to be Reimbursed.

Reimbursement of expenses to the Contractor shall not include any of the following:

(a) Salary of the Contractor, if an individual, or salary of any member of the Contractor, if a firm, or salary of any officer of the Contractor, if a corporation.

(b) Salary of any person employed, during the execution of the work, in the main office or in any regularly established branch office of the Contractor.

(c) Overhead or general expenses of any kind, except as these may be expressly included in Article 5.

(d) Interest on capital employed either in plant or in expenditures on the work, except as may be expressly included in Article 5.

.....
.....
.....

Article 7. Costs to be Paid Direct by the Owner

In addition to items of cost noted in Article 5 for which the Owner reimburses the Contractor, the Owner shall pay all costs as follows:

(a) Materials, supplies, equipment and transportation required for the proper execution of the work, which shall include all temporary structures and their maintenance; all such costs to be at rates not higher than the standard paid in the locality of the work except with prior consent of the Owner.

(b) The amounts of all separate contracts.

(c) Premiums on all bonds and insurance policies called for under Articles 19, 20, 21 and 22 of the General Conditions of the Contract.

(d) Rentals of all construction plant or parts thereof, whether rented from the Contractor or others, in accordance with rental agreements approved by the Architect. Transportation of said

construction plant, costs of loading and unloading, cost of installation, dismantling and removal thereof and minor repairs and replacements during its use on the work,—all in accordance with the terms of the said rental agreements.

Article 8. Discounts, Rebates, Refunds

All discounts, rebates and refunds, and all returns from sale of surplus materials, equipment, etc., shall accrue to the Owner, and the Contractor shall make provisions so that they can be secured.

Article 9. Contractor's Financial Responsibility

Any cost due to the negligence of the Contractor or anyone directly employed by him, either for the making good of defective work, disposal of material wrongly supplied, making good of damage to property, or excess costs for material or labor, or otherwise, shall be borne by the Contractor, and the Owner may withhold money due the Contractor to cover any such cost already paid by him as part of the cost of the work.

This article supersedes the provisions of Articles 13, 14 and 16 of the General Conditions of the Contract so far as they are inconsistent herewith.

Article 10. Separate Contracts

All portions of the work that the Contractor's organization has not been accustomed to perform or that the Owner may direct, shall be executed under separate contracts let by the Owner direct. In such cases either the Contractor shall ask for bids from contractors approved by the Architect and shall deliver such bids to him, or the Architect shall procure such bids himself, and in either case the Architect shall determine, with the advice of the Contractor and subject to the approval of the Owner, the award and amount of the accepted bid. The Owner shall contract for such work direct with such approved bidders in accordance with the terms of this agreement and the General Conditions of the Contract, which Conditions shall, for the

purposes of such contracts, stand as printed or written and not be subject to the modifications set forth herein.

The Contractor, being fully responsible for the general management of the building operation, shall have full directing authority over the execution of the separate contracts.

The separate Contractors shall not only cooperate with each other, as provided in Article 41 of the General Conditions of the Contract, but they shall conform to all directions of the Contractor in regard to the progress of the work.

Article 11. Title to the Work

The title of all work completed and in course of construction and of all materials on account of which any payment has been made, and materials to be paid for under Article 7, shall be in the Owner.

Article 12. Accounting, Inspection, Audit

The Contractor shall check all material and labor entering into the work and shall keep such full and detailed accounts as may be necessary to proper financial management under this Agreement and the system shall be such as is satisfactory to the Architect or to an auditor appointed by the Owner. The Architect, the auditor and their timekeepers and clerks shall be afforded access to the work and to all the Contractor's books, records, correspondence, instructions, drawings, receipts, vouchers, memoranda, etc., relating to this contract, and the Contractor shall preserve all such records for a period of two years after the final payment hereunder.

Article 13. Applications for Payment

The Contractor shall, between the first and seventh of each month, deliver to the Architect a statement, sworn to if required, showing in detail and as completely as possible all moneys paid out by him on account of the cost of the work during the previous month for which he is to be reimbursed under Article 5 hereof, with original pay rolls for labor, checked

and approved by a person satisfactory to the Architect, and all receipted bills.

He shall at the same time submit to the Architect a complete statement of all moneys properly due for materials or on account of separate contracts, or on account of his fee, or otherwise, which are to be paid direct by the Owner under Article 7 hereof.

The provisions of this Article supersede those of Article 26 of the General Conditions of the Contract.

Article 14. Certificates of Payment

The Architect shall check the Contractor's statements of moneys due, called for in Article 13, and shall promptly issue certificates to the Owner for all such as he approves, which certificates shall be payable on issuance.

The provisions of this Article supersede the first paragraph of Article 27 of the General Conditions of the Contract.

Article 15. Disbursements

Should the Contractor neglect or refuse to pay, within five days after it falls due, any bill legitimately incurred by him hereunder (and for which he is to be reimbursed under Article 5) the Owner, after giving the Contractor twenty-four hours' written notice of his intention so to do, shall have the right to pay such bill directly, in which event such payment shall not, for the purpose either of reimbursement or of calculating the Contractor's fee, be included in the cost of the work.

Article 16. Termination of Contract

(The provisions of this Article supersede all of Article 37 of the General Conditions of the Contract except the first sentence.)

If the Owner should terminate the contract under the first sentence of Article 37 of the General Conditions of the Contract, he shall reimburse the Contractor for the balance of all payments made by him under Article 5, plus a fee computed upon the cost of the work to date at the rate of percentage

named in Article 4 hereof, or if the Contractor's fee be stated as a fixed sum, the Owner shall pay the Contractor such an amount as will increase the payments on account of his fee to a sum which bears the same ratio to the said fixed sum as the cost of the work at the time of termination bears to a reasonable estimated cost of the work completed, and the Owner shall also pay to the Contractor fair compensation, either by purchase or rental, at the election of the Owner, for any equipment retained. In case of such termination of the contract, the Owner shall further assume and become liable for all obligations, commitments and unliquidated claims that the Contractor may have theretofore, in good faith, undertaken or incurred in connection with said work and the Contractor shall, as a condition of receiving the payments mentioned in this Article, execute and deliver all such papers and take all such steps, including the legal assignment of his contractual rights, as the Owner may require for the purpose of fully vesting in him the rights and benefits of the Contractor under such obligations or commitments.

The Contractor and the Owner for themselves, their successors, executors, administrators and assigns hereby agree to the full performance of the covenants herein contained.

IN WITNESS WHEREOF they have executed this agreement the day and year first above written.

THE STANDARD FORM OF AGREEMENT BETWEEN
OWNER AND ARCHITECT

ISSUED BY THE AMERICAN INSTITUTE OF ARCHITECTS FOR USE WHEN A PERCENTAGE
OF THE COST OF THE WORK FORMS THE BASIS OF PAYMENT

SECOND EDITION—COPYRIGHT 1917 BY THE AMERICAN INSTITUTE OF ARCHITECTS,
WASHINGTON, D. C.

Williston—Secs. 288, 688, 794-798, 1766 and 1966.

THIS AGREEMENT made the
day of in the year Nineteen Hundred and . . .
. by and between
.....
hereinafter called the Owner, and
.....

..... hereinafter called the Architect,
WITNESSETH, that whereas the Owner intends to erect.

.....
.....

Now, THEREFORE, the Owner and the Architect, for the considerations hereinafter named, agree as follows:

The Architect agrees to perform, for the above-named work, professional services as stated in Article 1 of the "Conditions of Agreement between Owner and Architect," hereinafter set forth.

The Owner agrees to pay the Architect at the rate of per cent, hereinafter called the basic rate, computed and payable as stated in the said "Conditions," and to make any other payments and reimbursements arising out of the said "Conditions."

.....
.....

The parties hereto further agree to the following:

CONDITIONS OF AGREEMENT BETWEEN OWNER AND ARCHITECT

Article 1. *The Architect's Services.*—The Architect's professional services consist of the necessary conferences, the preparation of preliminary studies, working drawings, specifications, large scale and full size detail drawings; the drafting of forms of proposals and contracts; the issuance of certificates of payment; the keeping of accounts, the general administration of the business and supervision of the work.

2. *The Architect's Fee.*—The fee payable by the Owner to the Architect for the performance of the above services is the percentage hereinbefore defined as the basic rate, computed upon the cost of the work in respect of which such services have been performed, subject, however, to any modi-

fications growing out of these Conditions of Agreement.

3. *Reimbursements.*—The Owner is to reimburse the Architect the costs of transportation and living incurred by him and his assistants while travelling in discharge of duties connected with the work, and the costs of the services of heating, ventilating, mechanical, and electrical engineers.

4. *Separate Contracts.*—The basic rate as hereinbefore defined is to be used when all of the work is let under one contract. Should the Owner determine to have certain portions of the work executed under separate contracts, as the Architect's burden of service, expense, and responsibility is thereby increased, the rate in connec-

tion with such portions of the work shall be four per cent greater than the basic rate. Should the Owner determine to have substantially the entire work executed under separate contracts, then such higher rate shall apply to the entire work. In any event, however, the basic rate shall, without increase, apply to contracts for any portions of the work on which the Owner reimburses the Engineer's fees to the Architect, and to the cost of articles not designed by the Architect but purchased under his direction.

5. *Extra Services and Special Cases.* If after a definite scheme has been approved, the Owner makes a decision which, for its proper execution, involves extra services and expense for changes in or additions to the drawings, specifications or other documents; or if a contract be let by cost of labor and material plus a percentage or fixed sum; or if the Architect is put to labor or expense by delays caused by the Owner or a contractor, or by the delinquency or insolvency of either, or as a result of damage by fire he shall be equitably paid for such extra service and expense.

Should the execution of any work designed or specified by the Architect, or any part of such work be abandoned or suspended, the Architect is to be paid in accordance with or in proportion to the terms of Article 6 for the service rendered on account of it up to the time of such abandonment or suspension.

6. *Payments.*—Whether the work be executed or whether its execution be suspended or abandoned in part or whole, payments to the Architect on his fee are, subject to the provisions of Article 5, to be made as follows:

Upon completion of the preliminary studies, a sum equal to 20% of the basic rate computed upon a reasonable estimated cost.

Upon completion of specifications and general working drawings (ex-

clusive of details) a sum sufficient to increase payments on the fee to 60% of the rate or rates of commission arising from this agreement, computed upon a reasonable cost estimated on such completed specifications and drawings, or if bids have been received, then computed upon the lowest bona fide bid or bids.

From time to time during the execution of work and in proportion to the amount of service rendered by the Architect, payments shall be made until the aggregate of all payments made on account of the fee under this Article, but not including any covered by the provisions of Article 5, shall be a sum equal to the rate or rates of commission arising from this agreement, computed upon the final cost of the work.

Payments to the Architect, other than those on his fee, fall due from time to time as his work is done or as costs are incurred.

No deduction shall be made from the Architect's fee on account of penalty, liquidated damages, or other sums withheld from payments to contractors.

7. *The Owner's Decisions.*—The Owner shall give thorough consideration to all sketches, drawings, specifications, proposals, contracts, and other documents laid before him by the Architect and, whenever prompt action is necessary, he shall inform the Architect of his decisions in such reasonable time as not to delay the work of the Architect nor to prevent him from giving drawings or instructions to contractors in due season.

8. *Survey, Borings, and Tests.*—The Owner shall furnish the Architect with a complete and accurate survey of the building site, giving the grades and lines of streets, pavements, and adjoining properties; the rights, restrictions, easements, boundaries, and contours of the building site, and full information as to sewer, water, gas,

and electrical service. The Owner is to pay for borings or test pits and for chemical, mechanical, or other tests when required.

9. *Supervision of the Work.*—The Architect will endeavor to guard the Owner against defects and deficiencies in the work of contractors, but he does not guarantee the performance of their contracts. The supervision of an architect is to be distinguished from the continuous personal superintendence to be obtained by the employment of a clerk-of-the-works.

When authorized by the Owner, a clerk-of-the-works acceptable to both Owner and Architect shall be engaged by the Architect at a salary satisfactory to the Owner and paid by the Owner, upon presentation of the Architect's monthly certificates.

10. *Preliminary Estimates.*—When requested to do so, the Architect will make or procure preliminary estimates on the cost of the work and he will endeavor to keep the actual cost of the work as low as may be consistent with the purpose of the building and with proper workmanship and material, but no such estimate can be regarded as other than an approximation.

11. *Definition of the Cost of the Work.*—The words "the cost of the work" as used in Articles 2 and 6 hereof are ordinarily to be interpreted as meaning the total of the contract sums incurred for the execution of the work, not including Architect's and Engineer's fees, or the salary of the Clerk-of-the-Works, but in certain rare cases, *e. g.*, when labor or material is furnished by the Owner below its market cost or when old materials are re-used, the cost of the work is to be interpreted as the cost of all materials and labor necessary to complete the work, as such cost would have been if all materials had been new and if all labor had been fully paid at market prices current when the work was ordered, plus contractor's profits and expenses.

12. *Ownership of Documents.*—Drawings and specifications as instruments of service are the property of the Architect whether the work for which they are made be executed or not.

13. *Successors and Assignment.*—The Owner and the Architect, each binds himself, his successors, executors, administrators, and assigns to the other party to this agreement, and to the successors, executors, administrators, and assigns of such other party in respect of all the covenants of this agreement.

The Architect shall have the right to join with him in the performance of this agreement, any architect or architects with whom he may in good faith enter into partnership relations. In case of the death or disability of one or more partners, the rights and duties of the Architect, if a firm, shall devolve upon the remaining partner or partners or upon such firm as may be established by him or them, and he, they or it shall be recognized as the "successor" of the Architect, and so on until the service covered by the agreement has been performed. The Owner shall have the same rights, but in his case no limitation as to the vocation of those admitted to partnership is imposed.

Except as above, neither the Owner nor the Architect shall assign, sublet or transfer his interest in this agreement without the written consent of the other.

14. *Arbitration.*—All questions in dispute under this agreement shall be submitted to arbitration at the choice of either party.

No one shall be nominated or act as an arbitrator who is in any way financially interested in this contract or in the business affairs of either party.

The general procedure shall conform to the laws of the State in which the work is to be erected. Unless otherwise provided by such laws, the parties may agree upon one arbitrator; other-

wise there shall be three, one named in writing by each party and the third chosen by these two arbitrators, or if they fail to select a third within ten days, then he shall be chosen by the presiding officer of the Bar Association nearest to the location of the work. Should the party demanding arbitration fail to name an arbitrator within ten days of his demand, his right to arbitration shall lapse. Should the other party fail to choose an arbitrator within said ten days, then such presiding officer shall appoint such arbitrator. Should either party refuse or neglect to supply the arbitrators with any papers or information demanded in writing, the arbitrators are empowered by both parties to proceed *ex parte*.

The arbitrators shall act with

promptness. If there be one arbitrator his decision shall be binding; if three, the decision of any two shall be binding. Such decision shall be a condition precedent to any right of legal action, and wherever permitted by law it may be filed in Court to carry it into effect.

The arbitrators shall fix their own compensation, unless otherwise provided by agreement, and shall assess the costs and charges of the arbitration upon either or both parties.

The award of the arbitrators must be in writing and, if in writing, it shall not be open to objection on account of the form of the proceedings or the award, unless otherwise provided by the laws of the State in which the work is to be erected.

The Owner and the Architect hereby agree to the full performance of the covenants contained herein.

IN WITNESS WHEREOF they have executed this agreement, the day and year first above written.

In Presence of

..... } as to

..... }

..... } as to

..... }

A FORM OF AGREEMENT BETWEEN OWNER AND ARCHITECT ON THE FEE PLUS COST SYSTEM

COPYRIGHT 1917 BY THE AMERICAN INSTITUTE OF ARCHITECTS, THE OCTAGON, WASHINGTON, D. C.

THIS AGREEMENT made the... day of... in the year Nineteen Hundred and... by and between... hereinafter called the Owner, and... hereinafter called the Architect, WITNESSETH, that whereas the Owner intends to erect... (Add here brief description of scope and manner of execution of work.)

NOW, THEREFORE, the Owner and the Architect, for the considerations hereinafter named, agree as follows:

The Architect agrees to perform for the above-named work, professional services as stated in Article 1 of the "Conditions of Agreement between Owner and Architect" hereinafter set forth.

The Owner agrees to pay the Architect the sum of... dollars (\$...) as his fee, of which... dollars (\$...) is to be paid in... equal installments monthly, beginning..., the balance to be paid on issuance of final certificate; and to reimburse the Architect monthly all costs incurred by him in the performance of his duties hereunder as more fully set forth in the said "Conditions."

The parties hereto further agree to the following:

CONDITIONS OF AGREEMENT BETWEEN OWNER AND
ARCHITECT

Article 1. The Architect's Services.—The Architect's professional services consist of the necessary conferences, the preparation of preliminary studies, working drawings, specifications, large-scale and full-size detail drawings; the drafting of forms of proposals and contracts; the issuance of certificates of payment; the keeping of accounts, the general administration of the business and supervision of the work.

2. *The Architect's Fee.*—The fee payable by the Owner to the Architect for his personal professional services shall be named elsewhere in this Agreement.

In case of the abandonment or suspension of the work or of any part or parts thereof, the Architect is to be paid in proportion to the services rendered on account of it up to the time of its abandonment or suspension, such proportion being 20% upon completion of preliminary sketches and 60% upon completion of working drawings and specifications.

If the scope of the work or the manner of its execution is materially changed subsequent to the signing of the Agreement the fee shall be adjusted to fit the new conditions.

If additional personal service of the Architect is made necessary by the delinquency or insolvency of either the Owner or the Contractor, or as a result of damage by fire, he shall be equitably paid by the Owner for such extra service.

3. *The Architect's Costs.*—The Architect shall maintain an efficient and accurate cost-keeping system as to all costs incurred by him, in connection with the subject of this agreement, and his accounts, at all reasonable times, shall be open to the inspection of the Owner or his authorized representatives.

The costs referred to in this Article comprise the following items:

(a) The sums paid for drafting, including verification of shop drawings, for specification writing and for supervision of the work.

(b) The sums paid to structural, mechanical, electrical, sanitary or other engineers.

(c) The sums paid for incidental expenses such as costs of transportation or living incurred by the Architect or his assistants while traveling in discharge of duties connected with the work, costs of reproducing drawings, printing or mimeographing the specifications, models, telegrams, long distance telephone calls, legal advice, expressage, etc.

(d) A proportion of the general expenses of the Architect's office, commonly called "Overhead," representing items that cannot be apportioned in detail to this work, such as rent, light, heat, stenographer's services, postage, drafting materials, telephone, accounting, business administration, etc.

It is agreed that the charge for such general expenses shall be per cent of item (a) of this article.

4. *Payments.*—On or about the first day of each month the Architect shall present to the Owner a detailed statement of the payment due on account of the fee and the costs referred to in Article 3 and the Owner shall pay the Architect the amount thereof.

5. *The Owner's Decisions.*—The Owner shall give thorough consideration to all sketches, drawings, specifications, proposals, contracts and other documents laid before him by the Architect and, whenever prompt action is necessary, he shall inform the Architect of his decisions in such reasonable time as not to delay the work of the Architect nor to prevent him

from giving drawings or instructions to Contractors in due season.

6. *Survey, Borings and Tests.*—The Owner shall furnish the Architect with a complete and accurate survey of the building site, giving the grades and lines of streets, pavements and adjoining properties; the rights, restrictions, boundaries and contours of this building site, and full information as to sewer, water, gas and electrical service. The Owner is to pay for test borings or pits and for chemical, mechanical or other tests when required.

7. *Supervision of the Work.*—The Architect will endeavor to guard the Owner against defects and deficiencies in the work of contractors, but he does not guarantee the performance of their contracts. The supervision of an Architect is to be distinguished from the continuous personal superintendence to be obtained by the employment of a clerk-of-the-works.

When authorized by the Owner, a clerk-of-the-works, acceptable to both Owner and Architect, shall be engaged by the Architect at a salary satisfactory to the Owner and paid by the Owner.

8. *Preliminary Estimates.*—When requested to do so, the Architect will make or procure preliminary estimates on the cost of the work and he will endeavor to keep the actual cost of the work as low as may be consistent with the purpose of the building and with proper workmanship and material, but no such estimate can be regarded as other than an approximation.

9. *Ownership of Documents.*—Drawings and specifications as instruments of service are the property of the Architect whether the work for which they are made be executed or not.

10. *Successors and Assignment.*—The Owner and the Architect, each binds himself, his successors, executors, administrators, and assigns to the other party to this agreement, and to the successors, executors, adminis-

trators, and assigns of such other party in respect of all the covenants of this Agreement.

The Architect shall have the right to join with him in the performance of this agreement, any architect or architects with whom he may in good faith enter into partnership relations. In case of the death or disability of one or more partners, the rights and duties of the Architect, if a firm, shall devolve upon the remaining partner or partners or upon such firm as may be established by him or them, and he, they or it, shall be recognized as the "successor" of the Architect, and so on until the service covered by the agreement has been performed. The Owner shall have the same rights, but in his case no limitation as to the vocation of those admitted to partnership is imposed.

Except as above, neither the Owner nor the Architect shall assign, sublet or transfer his interest in this agreement without the written consent of the other.

11. *Arbitration.*—All questions in dispute under this agreement shall be submitted to arbitration at the choice of either party.

No one shall be nominated or act as an arbitrator who is in any way financially interested in this contract or in the business affairs of either party.

The general procedure shall conform to the laws of the State in which the work is to be erected. Unless otherwise provided by such laws, the parties may agree upon one arbitrator; otherwise there shall be three, one named in writing by each party and the third chosen by these two arbitrators, or if they fail to select a third within ten days, then he shall be chosen by the presiding officer of the Bar Association nearest to the location of the work. Should the party demanding arbitration fail to name an arbitrator within ten days of his demand, his right to

arbitration shall lapse. Should the other party fail to choose an arbitrator within said ten days, then such presiding officer shall appoint such arbitrator. Should either party refuse or neglect to supply the arbitrators with any papers or information demanded in writing, the arbitrators are empowered by both parties to proceed ex parte.

The arbitrators shall act with promptness. If there be one arbitrator his decision shall be binding; if three, the decision of any two shall be binding. Such decision shall be a condition precedent to any right of legal

action, and whenever permitted by law it may be filed in Court to carry it into effect.

The arbitrators shall fix their own compensation, unless otherwise provided by agreement and shall assess the costs and charges of the arbitration upon either or both parties.

The award of the arbitrators must be in writing and, if in writing, it shall not be open to objection on account of the form of the proceedings or the award, unless otherwise provided by the laws of the State in which the work is to be erected.

The Owner and the Architect hereby agree to the full performance of the covenants contained herein.

IN WITNESS WHEREOF they have executed this agreement, the day and year first above written.

.....
 o.....

THE STANDARD FORM OF AGREEMENT BETWEEN CONTRACTOR AND OWNER

ISSUED BY THE AMERICAN INSTITUTE OF ARCHITECTS FOR USE WHEN A STIPULATED SUM FORMS THE BASIS OF PAYMENT

The Standard Documents have received the approval of the National Association of Builders' Exchanges, the National Association of Master Plumbers, the National Association of Sheet Metal Contractors of the United States, the National Electrical Contractors' Association of the United States, the National Association of Marble Dealers, the Building Granite Quarries Association, the Building Trades Employers Association of the City of New York, and the Heating and Piping Contractors National Association.

THIRD EDITION, COPYRIGHT 1915-1918 BY THE AMERICAN INSTITUTE OF ARCHITECTS, THE OCTAGON, WASHINGTON, D. C. THIS FORM IS TO BE USED ONLY WITH THE STANDARD GENERAL CONDITIONS OF THE CONTRACT

THIS AGREEMENT made the..... day of..... in the year Nineteen Hundred and..... by and between.....

..... hereinafter called the Contractor, and..... hereinafter called the Owner,

WITNESSETH, that the Contractor and the Owner for the considerations hereinafter named agree as follows:

Article 1. The Contractor agrees to provide all the materials and to perform all the work shown on the Drawings and described in the Specifications entitled.....

(Here insert the caption descriptive of the work as used in the Proposal, General Conditions, Specifications, and upon the Drawings.)

..... prepared by.....

acting as, and in these Contract Documents entitled the Architect, and to do everything required by the General Conditions of the Contract, the Specifications and the Drawings.

Article 2. The Contractor agrees that the work under this Contract shall be substantially completed.....

(Here insert the date or dates of completion, and stipulations as to liquidated damages, if any).

.....
.....
.....

Article 3. The Owner agrees to pay the Contractor in current funds for the performance of the Contract

.....
..... (\$.....).

subject to additions and deductions as provided in the General Conditions of the Contract and to make payments on account thereof as provided therein, as follows: On or about the..... day of each month..... per cent of the value proportionate to the amount of the Contract, of labor and materials incorporated in the work..... up to the first day of that month as estimated by the Architect, less the aggregate of previous payments. On substantial completion of the entire work, a sum sufficient to increase the total payments to..... per cent of the contract price, and..... days thereafter, provided the work be fully completed and the Contract fully performed, the balance due under the Contract.

.....
.....
.....

Article 4. The Contractor and the Owner agree that the General Conditions of the Contract, the Specifications and the Drawings, together with this Agreement, form the Contract, and that they are as fully a part of the Contract, as if hereto attached or herein repeated; and that the following is an exact enumeration of the Specifications and Drawings:

.....
.....
.....

The Contractor and the Owner for themselves, their successors, executors, administrators and assigns, hereby agree to the full performance of the covenants herein contained.

IN WITNESS WHEREOF they have executed this agreement, the day and year first above written.

These comments of the Institute are printed as published without comment by the author.

The use of a seal or of the word "seal" with the name of an individual or firm can do no harm, but since the only significance of a seal as used in ordinary contracts is to imply a consideration, and since all of the Institute's forms of agreement recite considerations, the use of a seal, except in the case of a corporation, is quite unnecessary. A bond, however, by its very nature must be under seal.

NOTES ON THE GENERAL CONDITIONS OF THE CONTRACT

In some cases the Articles as printed do not include all necessary General Conditions of the Contract. The Architect will then add such others as he deems wise.

Many architects include in their General Conditions one or more of the subjects named below. Most of these are better placed in the specifications for the various trades; and others, though suited for inclusion in the General Conditions, are not always needed. Among these subjects are:

- Bracing building during construction,
- Charges for extra copies of drawings,
- Chases,
- Checking by surveyor and his certificate,
- Contractor to keep the work in repair,
- Contractor to lay out the work, giving lines and levels,
- Contractor to work overtime if required,
- Fences,

- Heating during construction,
- Insurance against lightning, wind storms, hail and earthquake,
- Keeping building and cellar free from water,
- Ladders,
- Lanterns,
- Offices and their furniture,
- Permission to use articles or methods other than those specified,
- Photographs,
- Protection and care of trees and shrubs,
- Protective coverings in general,
- Sanitary convenience,
- Scaffolding,
- Sheds,
- Sidewalks,
- Special cleaning other than "broom clean," as in Article 33,
- Stoppage of work in freezing weather,
- Telephone,
- Temporary enclosure from weather,
- Temporary stairways,
- Temporary wiring and electric lights,
- Vault permits,
- Watchmen.

For further information of use in connection with the General Conditions, refer to the "Handbook of Architectural Practice," published by the American Institute of Architects.

NOTES ON THE BOND OF SURETYSHIP

The bond of Suretyship is drawn for use with either corporate or individual sureties. If a bond is to be given, this form, without additions or omissions, should be insisted upon to

insure a full measure of protection. Proper certification that those signing the bond have authority so to sign should accompany the bond.

NOTES ON THE INVITATION TO BID, INSTRUCTIONS TO BIDDERS AND FORM OF PROPOSAL

The Institute formerly issued the above named forms which contain much of value. Experience, however, showed that they had generally to be adapted to specific cases. They are, therefore, reproduced here so that Architects may draw from them whatever they deem useful.

FORM OF INVITATION TO SUBMIT A PROPOSAL

DEAR SIR: You are invited to submit a proposal for
Drawings, Specifications and other information may be procured from this office on and after
All documents must be returned to this office not later than.....
.....

To be entitled to consideration the proposal must be made upon the form provided by the Architect, which must be fully completed in accordance with the accompanying "Instructions to Bidders" and must be delivered to this office not later than.....

Very truly yours,

.....

FORM OF INSTRUCTIONS TO BIDDERS

Proposals, to be entitled to consideration, must be made in accordance with the following instructions.

Proposals shall be made upon the form provided therefor, and all blank spaces in the form shall be fully filled; numbers shall be stated both in writing and in figures; the signature shall be in long hand; and the completed form

shall be without interlineation, alteration or erasure.

Proposals shall not contain any recapitulation of the work to be done. No oral, telegraphic or telephonic proposals or modifications will be considered.

Proposals shall be addressed to the Owner, in care of the Architect, and shall be delivered to the Architect enclosed in an opaque sealed envelope addressed to him, marked "Proposal" and bearing the title of the work and the name of the Bidder.

Should a bidder find discrepancies in, or omissions from, the drawings or documents, or should he be in doubt as to their meaning, he should at once notify the Architect, who will send a written instruction to all bidders. Neither Owner nor Architect will be responsible for any oral instructions.

Before submitting a proposal, bidders should carefully examine the drawings and specifications, visit the site or work, fully inform themselves as to all existing conditions and limitations and shall include in the Proposal a sum to cover the cost of all items included in the Contract.

The competency and responsibility of bidders and of their proposed subcontractors will be considered in making the award. The Owner does not obligate himself to accept the lowest or any other bid.

Provision will be made in the Agreement for payments on account in the following words: (Insert the Provision).

Any Bulletins issued during the time of bidding are to be covered in the proposal and in closing a contract they will become a part thereof.

FORM OF PROPOSAL

(The Proposal should be dated and addressed to the Owner in care of the Architect.)

DEAR SIR: Having carefully examined the Instructions to Bidders,

the General Conditions of the Contract and Specifications entitled.....

(Here insert the caption descriptive of the work as used therein.) and the Drawings, similarly entitled, numbered.....as well as the premises and the conditions affecting the work, the Undersigned proposes to furnish all materials and labor called for by them for.....

(Here insert, in case all the work therein described is to be covered by one contract, "the entire work." In case of a partial contract insert name of the trade or trades to be covered and the numbers of the pages of the Specifications on which the work is described.)

in accordance with the said documents for the sum ofDollars (\$.....). If he be notified of the acceptance of this proposal withindays of the time set for the opening of bids he agrees to execute a contract for the above work, for the above stated compensation in the form of the Standard Agreement of the American Institute of Architects.

Very truly yours,
.....

SUGGESTIONS TO ARCHITECTS USING THE ABOVE FORM OF PROPOSAL

The above form includes only such statements as will probably be required in any Proposal. Additions will usually have to be made to it. Suggestions suited to certain conditions are offered in the following notes.

If the bidder is to name the time required for completing the work, insert such a clause as the following:

The undersigned agrees, if awarded the Contract, to complete it within..... days, Sundays and whole holidays not included.

If liquidated damages are to be required, insert the following:

And further agrees that, from the com-

ensation otherwise to be paid, the Owner may retain the sum of..... dollars (\$.....) for each day thereafter, Sundays and holidays included, that the work remains uncompleted, which sum is agreed upon as the proper measure of liquidated damages which the Owner will sustain per diem by the failure of the undersigned to complete the work at the time stipulated, and this sum is not to be construed as in any sense a penalty.

If a bond is required, insert the following:

The undersigned agrees, if awarded the Contract, to execute and deliver to the Architect within.....days after the signing of the Contract, a satisfactory bond in the form issued by the American Institute of Architects (second edition reissued 1918) and in an amount equal to the contract sum, and further agrees that if such bond be not required, he will deduct from the proposal price the sum of.....dollars (\$.....).

If a certified check is required, the following clause should be inserted:

The undersigned further agrees that the certified check payable to..... Owner, accompanying this proposal, is left in escrow with the Architect; that its amount is the measure of liquidated damages which the Owner will sustain by the failure of the Undersigned to execute and deliver the above named Agreement and bond, and that if the Undersigned defaults in executing that Agreement withindays of written notification of the award of the contract to him or in furnishing the Bond within.....days thereafter, then the check shall become the property of the Owner, but if this proposal is not accepted within..... days of the time set for the submission of bids, or if the Undersigned executes and delivers said Contract and Bond, the check shall be returned to him on receipt therefor.

If alternative proposals are required, they should be set forth, as for example,

Should.....be substituted for.....the Undersigned agrees to deduct (or will require the addition of).....dollars (\$.....) from (or to) the proposed sum.

If unit prices are required as a part of the proposal, they should be set forth as, for example:

The Undersigned agrees that work added shall be computed at the following prices, and that work omitted shall be computed at.....per cent less than these prices.

Concrete foundations.....per cubic yard,

Rough brickwork.....per thousand,

Plastering.....per yard.

If the names of subcontractors whom the Contractor proposes to employ are required as a part of the Proposal this requirement should be set forth, as, for example:

In case of obtaining the award the Undersigned will employ, subject to the Architect's approval, subcontractors in each of the several trades selected from the following list (one or more names must be inserted for each trade):

Excavation

Stone Masonry.....

Brickwork.....

etc., etc.

Building Contract, Cost plus Basis

AGREEMENT

made.....

BETWEEN.....

hereinafter designated as the Owner

AND.....

hereinafter designated as the Contractor.

WITNESSETH:

1. The Contractor hereby covenants, promises and agrees, to and with the said Owner, for the consideration hereinafter named, within...months from the date hereof, to well and sufficiently perform, and substantially complete and finish the several works required to be performed in connection withon premises, agreeably to the drawings and specification prepared by.....

Architects, (said Drawings and Specification being hereby made a part of this agreement) and also to find, furnish and provide such good, proper and sufficient labor, cartage and materials of all kinds whatsoever, as shall be proper, requisite and sufficient for performing, completing and finishing the several works required for said building as shown on said Drawings and as called for in said Specification, as therein and herein provided, and similarly to perform each and every of the General Requirements to such specifications annexed.

All of the foregoing to be done in a proper, skillful and workmanlike manner, to the satisfaction of and under the direction of said.....Architects, and to be testified by a written certificate under the hand of the said Architects.

2. The Owner hereby covenants, promises and agrees, to and with the said Contractor, in consideration of the covenants and agreements on the part of the Contractor, herein contained, being strictly performed and kept by the Contractor, as specified herein, to pay or cause to be paid to the Contractor for the

works performed by the Contractor hereunder, the sum of the actual net cost to the Contractor of the materials actually furnished and labor and cartage actually performed by it hereunder on and for said building, plus a profit of per cent.

It is agreed that in the aforesaid net cost there shall not be included any interest on moneys, rent of the general office of the Contractor, the services of any walking or visiting superintendent, or any officer of the Contractor, nor the clerical services of the general office of the Contractor, and further that in determining the actual net cost of articles or materials or items of every kind covered by the within agreement, there shall be deducted from the gross cost thereof all cash and trade discounts, rebates, allowances, credits, salvage, commissions and bonifications. The contractor agrees to obtain all possible trade and time discounts on bills for materials furnished for said building, and will pay the bills for such materials within the highest discount periods.

It is agreed that the term "actual net cost" shall include only the following:—

a. The actual net cost to the Contractor of all labor furnished without sub-letting.

b. The actual net cost of materials purchased for this operation as shown by the original invoices of said materials after all discounts, rebates, commissions, allowances, credits, bonifications and salvage have been deducted.

c. The expenses incurred by the Contractor for the rental and operating costs of hoisting apparatus (less all rebates) and swinging scaffolds, and for the cartage to and from the site of all materials, tools, scaffolding, supplies, etc., telephone service at the site. Also for all permits required in connection with this contract.

d. The cost of all scaffolding, tools, lanterns, hose and brooms, etc., including maintenance and repairs to same. Bills for such item shall be included in the Contractor's regular applications for payment, and all (except lanterns, hose and brooms), shall be specially identified by being stamped "Plant." Upon the completion of the work, a statement is to be prepared of all such "Plant" bills and from the total amount billed there-

for a deduction of twenty-five per cent (25%) is to be made for depreciation, wear and tear, and loss of scaffolding, tools, etc., and of the balance fifty per cent (50%) is to be charged as part of the net cost of the work, and the remaining fifty per cent (50%) is to be credited to the Owner by the Contractor on his final bill, which credit is to be deducted from the final payment made to the Contractor, the materials then becoming the property of the Contractor.

e. The total amount of sub-contracts entered into by the Contractor for the work and materials as approved, as hereinafter provided.

f. The expenses incurred by the Contractor for the time and traveling expenses of the Contractor's inspectors, necessarily visiting the shops of sub-contractors for the purpose of inspecting the work of sub-contractors for said building if such shops be distant a greater radius than twenty-five miles from the City Hall of New York City.

3. Payments shall be made to the Contractor as follows:—

On or about the first of each month, the Contractor is to render a detailed, itemized statement to the Architects, showing the net cost of materials delivered at the building site, the net cost of materials actually installed in, and of cartage and labor actually performed for and on said building, and the net cost of materials manufactured for the said building but not yet delivered at the building site and for which at the time of ordering it is agreed by the Owner that payment will be made when manufactured and prior to delivery, and the Owner is to make payment of the amounts of same to the Contractor, plus the aforesaid profit of.....per cent thereon, less..... per cent, which.....per cent shall be paid to the said Contractor when all the works herein agreed to be performed by it have been performed and practically completed. The final payment in full to be made to the Contractor when all the work herein agreed to be performed by it has been performed and completed.

It is expressly understood and agreed that the Contractor is not to receive any payment for any material for said building before delivery at the building site unless the Owner shall hereafter agree thereto in writing.

4. It is agreed by the parties that the Contractor may at his option during the progress of the work submit to the Architects on or about the middle of each month a payment requisition accompanied by receipted bills, and receipted vouchers covering the amount expended by the Contractor for pay rolls, for work performed directly by the Contractor and for all bills discounted for the benefit of the Owner, and the Owner agrees to pay to the Contractor the amount of such requisition within one week after the receipt thereof by the Architects, plus the aforesaid profit of per cent, less the aforesaid retention of per cent.

It is agreed that the Contractor, in making the regular monthly requisitions for payments under this contract (excepting the first requisition), shall deliver the previous month's bills, accompanied by receipted vouchers and receipted bills for same of all sub-contractors or other persons (except receipts for labor directly employed by the Contractor for which labor the Contractor will submit its weekly payrolls) for the approval of the Architects, which bills shall show any and all discounts that may be allowed thereon, and the Contractor shall not be entitled to any monthly payment, after the first payment, unless he has delivered to the Architects receipted vouchers from sub-contractors and material men, covering the previous payment made to the Contractor by the Owner.

In case any errors shall be found in any of the bills aforesaid, the Contractor shall make good any and all of such errors and shall reimburse the Owner for the amount thereof.

Prior to each of said payments by Owner to Contractor, said Contractor shall present and deliver to the said Owner a certificate in writing, under the hand of the said certifying that the Contractor has performed such labor and cartage, and furnished such materials and manufactured such materials, under and in accordance with the provisions of this agreement, as to entitle said Contractor to such payment. No certificate given or payment made under this contract, including the final certificate and final payment, shall be construed to be an acceptance of defective work or improper materials.

5. The Contractor agrees to provide all manner of materials and labor, scaffolding, implements, and cartage of every de-

scription for the due performance of the Contractor's part of this agreement.

6. The Contractor agrees to obtain and pay for all permits and licenses and to give all notices, pay all fees, and to comply with all laws, ordinances, rules and regulations bearing on the work, and the cost thereof shall be included in the net cost of the building. If any of the work shall be done contrary to such laws, ordinances, rules and regulations, the Contractor agrees to bear all costs and expenses arising therefrom, and also to indemnify and save the Owner harmless from all penalties and damages incurred by reason of the non-observance by the Contractor of such laws, ordinances, rules and regulations, or failure to give notices, or to obtain permits and licenses.

7. Should the Owner at any time during the progress of said work, desire to make any alterations, deviations, additions, or omissions, from said specifications, drawings, or from the requirements under this agreement, so far as relates to the matters or work to be done or materials to be furnished by the Contractor, said Owner shall be at liberty to do so, and the same shall in no way affect or make void this agreement, except as otherwise provided in the fifth clause of this agreement.

8. Should the Contractor at any time during the progress of said works, in the opinion of said Architects, refuse or neglect to supply proper or sufficient materials or workmen, or should it suspend work on any of said works on said building (except through stress of weather), on any working day, or should the Contractor be adjudged a bankrupt or make a general assignment for the benefit of creditors, or should a receiver be appointed of the Contractor, said Owner shall have the right, and is hereby authorized, except as otherwise agreed in paragraph 9 hereof, on giving three days' written notice signed by said Architects acting for said Owner, mailed to the said Contractor to its office address, to provide labor and materials and proceed with and finish the said works and the said Contractor shall be liable to the Owner for all resulting costs, damages and expenses.

The Owner may, however, for the causes mentioned in this and at its option, after three days' written notice signed by said Architects acting for said Owner, and mailed to Contractor as

aforesaid, terminate the employment of the Contractor for any or all of the said works and enter upon the premises and take possession, for the purpose of completing such works, of all materials, tools, appliances thereon, and employ any other person or persons to finish the work, and provide the materials and labor therefor, and in case of such discontinuance of the employment of the Contractor, said Contractor shall not be entitled to receive any further payments under this contract until the said works shall be wholly finished, at which time the Contractor shall be paid whatever balance is found to be due to it for amounts expended either for labor, materials, payments to sub-contractors or otherwise, plus the Contractor's percentage of profit aforesaid and as shall be certified to by the Architects, less, however, such expenses or damages as the Owner may suffer by so completing said works. It is understood and agreed that should the expense to the Owner in completing this contract be increased by reason of such discontinuance of the employment of the Contractor, then the Contractor shall be responsible to the Owner for such entire increase in addition to the other expenses or damages, hereinabove referred to.

9. Should the Contractor be obstructed or delayed in the prosecution or completion of the alterations to said building by the acts, neglect or default of the Owner, or of the Architects, or by any sub-contractor for whom the Contractor is not responsible, or of common carrier, or by any damage which may happen by fire or other casualty for which the Contractor is not responsible, or by a combined abandonment of the work by workmen engaged in the manufacture of materials for said building or of workmen directly engaged on work on said building, in no wise caused by any act, fault, default or collusion of the Contractor, then the time hereinbefore fixed for the completion of the alterations to said building shall be extended for a period equal to the time lost by reason of any or all of the causes aforesaid, but no extension shall be made unless a claim therefor is presented, in writing to the said Architects, within forty-eight hours after the occurrence of such delay. The duration of such extension shall be certified to by the Architects, but appeal may be made from their decision to arbitration as hereinafter provided, anything herein to the contrary notwithstanding.

10. Should any dispute arise between the parties hereto, respecting the true construction or meaning of the drawings or specifications, the same shall be decided by said Architects, and their decision shall be final and conclusive; but should any dispute arise with respect to the extension of time allowed by the Architects for any of the causes referred to in the fifth clause of this agreement, such extension of time shall be fixed by two competent persons, one chosen by the Owner and the other by the Contractor, and a third person chosen by the said two persons (no one of whom shall be or shall have been in any manner connected with the works covered by the within agreement), and the decision of said three persons or a majority of them shall be binding, final and conclusive on the parties hereto, and no action shall be brought upon this agreement in any court until after the award of such arbitrators is duly made. The expense of such arbitration shall be borne equally by the parties hereto. If either of the parties hereto fail within three days after such dispute shall arise, to appoint such arbitrator, then said Architects on request of other party and after giving written notice to each party, shall appoint one in his stead with the same power as though he had been appointed by such party.

11. The Contractor shall guard, cover, protect, and exercise due diligence to secure, and will secure said premises and building thereon, also the adjoining and contiguous premises with wall or walls, structure or structures thereon, also the Contractor's work and materials, from injury during or resulting from any work performed under this agreement, and all damage so happening to same shall be made good by the Contractor, except as otherwise agreed in this seventh clause. The Owner shall not in any way or to any extent be liable or responsible or accountable for any loss, injury or damage, which shall or may happen to the work done, or to the materials supplied, or other things used or employed by the Contractor on or about premises or in and about said building, (damage to work and to materials built into said building, also damage to tools, scaffolding, hoisting apparatus and materials delivered at the building site, by fire excepted as hereinafter agreed) and shall not be responsible, answerable or accountable for the conse-

quence of any act or acts, omission or omissions or negligence, of the Contractor or any sub-contractor or their workmen, servants, or employees, engaged on or about or for such building, nor for any injury or damage thereby happening to person or property or work done, or materials furnished by the Contractor hereunder, or anyone employed under said Contractor or any sub-contractor. The Owner will insure against loss by fire all materials built into said building, also from time to time, at the Contractor's request, for a reasonable valuation amount to be named by the Contractor, and protecting both the said Owner and said Contractor, as their respective interests may appear, tools, scaffolding, hoisting apparatus, and materials for said building as same are delivered at the building site, provided the Contractor delivers the request for such insurance to the Owner, through the said Architects, at least three days in advance of the delivery of the tools, scaffolding, hoisting apparatus, and materials at the building site. Premiums on all such fire insurance will be paid by the Owner.

12. Should any person or persons, or property be damaged or injured by the Contractor, or any of its subcontractors, or by any person or persons employed under said Contractor, or any of its sub-contractors, in the course of the performance by said Contractor, or any of its sub-contractors, of this agreement or otherwise, whether by negligence or otherwise, said Contractor shall alone be liable, responsible and answerable therefor, and does hereby agree to and with the said Owner, to hold harmless and indemnify said Owner, of and from all claims, suits, actions, costs, counsel fees, expenses, damages, judgments or decrees by reason thereof.

13. Should any claim or claims be made by any person or persons, for work done upon, or materials furnished for, the said building, upon the employment of, or on the purchase of, or under agreement with, or alleged employment or purchase of, or agreement with said Contractor, and a notice of such claim or claims be, under any law now in force or which may be in force, filed so as to create a lien or liens on said building, or the land whereon the same is constructed, or should any assignment of this contract or of the moneys due or to become due thereunder, be made, or any order drawn by the Contractor for

the payment of such moneys, said Owner shall have the right to withhold, out of any moneys then or thereafter payable to said Contractor under this agreement, a sum sufficient to satisfy said claim or claims, lien or liens, assignment or order, and any reasonable costs and expenses thereby incurred or to which it may be subjected by reason of said claim or claims, lien or liens, assignment or order, until such claim or claims, lien or liens, assignment or order be cancelled and discharged of record by said Contractor, and the delivery to said Owner of due and proper certificate or certificates, of the discharge and cancellation of record of such claim or claims, lien or liens, assignment or order. And said Contractor hereby agrees to cause such claim or claims, lien or liens, assignment or order to be cancelled and discharged of record as soon as attention is called thereto, without loss, damage, or expense to said Owner, and without delaying said work; and in case said Contractor fails so to do within ten days after attention is called thereto, said Owner may, with any moneys retained as aforesaid, and by any course that will accomplish it, whether by payment to the claimant or claimants or by deposit with the proper official, secure or cause the cancellation and satisfaction of such claim or claims, lien or liens, assignment or order, and any and all of them, and at the expense of the said Contractor, and any moneys so expended by the Owner, including any legal fees or other proper charges, shall be applied upon and deducted from any moneys that may be payable to the Contractor hereunder. If any lien or claim be filed or remain unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such lien or claim, including all costs and expenses.

14. Where it is necessary to sub-let any of the works covered by the within agreement, the said Contractor will obtain competitive bids for the supply of materials and performance of labor therefor. Such bids shall be taken from responsible and skillful sub-contractors and responsible material houses designated by Architects or Owner and Contractor. Timely opportunity to bid shall be accorded to all such sub-contractors and material houses. Such bids shall be delivered to and opened by the Architects. These sub-contracts shall be awarded to the

bidder chosen by the Contractor, but must be approved by the Architects or Owner. All sub-contracts executed shall be made in the name of the Contractor.

Nothing contained in the sub-contracts shall create any contractual relation between any sub-contractor and the Owner, and the same shall not in any way relieve the Contractor of its agreements, covenants, obligations and responsibilities hereunder.

15. The Contractor agrees that it will keep accurate records and books of accounts, showing the cost of the respective works performed under this agreement on said building, and will permit the said Owner, the said Architects, or their representatives, during all reasonable business hours, to inspect all payrolls, accounts, contracts, records, and books of the said Contractor, in so far as they relate to matters or works covered by this agreement.

16. The Contractor agrees to protect and hold the Owner harmless against any and all demands and claims on account of infringements or alleged infringements of patented or alleged patented articles or inventions used on and for said building, will pay all royalties, and will, at its own cost and expense, defend any and all suits which may be brought against the Contractor or the Owner on account of infringements or alleged infringements, and will pay any and all fees, costs and damages resulting therefrom.

17. It is agreed that the Architects act in a professional capacity and simply as agents for the Owner, and that as such they neither assume nor incur any pecuniary responsibility whatever.

18. The Contractor agrees to be responsible for and will superintend the execution of all the works covered by this agreement.

The Contractor agrees to consult and coöperate with the Architects, give advice, make suggestions, and wherever possible, will endeavor to effect proper savings and economies in all parts of the work.

19. The sum hereinbefore agreed to be paid to the Contractor will be full and complete compensation for all the services to be performed by the Contractor, and no additional

compensation will be given for the letting of any sub-contracts by the Contractor and no extras shall be granted by the Contractor to any sub-contractors without a written order from the Architects.

20. The Contractor shall maintain such insurance as will protect him and the Owner from claims under Workmen's Compensation Acts, and from any other claims for damages for personal injury, including death, which may arise from operations under this contract. Certificates of such insurance shall be filed with the Architects, and shall be subject to approval of Owner and Architects as to the companies writing such insurance and the adequacy of protection. The cost of such insurance is to be charged as part of the net cost of the building.

21. It is agreed that the said is an independent Contractor and not an agent for the Owner.

22. It is agreed by and between the Owner and Contractor that time is of the essence of this agreement.

23. This agreement shall not be assignable by the Contractor without the written consent of the Owner.

24. The covenants and agreements herein set forth shall extend to, and bind the parties hereto, their successors and assigns.

Building Contract—Cost Plus Basis—Another Form

AGREEMENT, made..... between.....
 hereinafter referred to as Contractor and.....
 hereinafter referred to as Owner.

In consideration of the mutual promises herein contained, the parties agree as follows:

1. The Contractor agrees, for the consideration hereinafter named, to perform all of the work and provide all of the labor, cartage, materials, implements, machinery, appliances and all other articles necessary or proper to completely erect, construct and finish in a good, substantial and workmanlike manner, a building upon certain premises situated.....

; all in accordance with and as shown on certain drawings and described in certain specifications prepared byArchitect, which drawings and specifications have been identified by the parties, and are hereby made a part of this contract.

2. The work included in this contract shall be done under the general supervision and direction of the said Architect. Should there be a disagreement between the Contractor and the Architect as to the true construction and meaning of the drawings or specifications, the Contractor shall adopt the construction contended for by the Architect, so that there may be no delay in the work by reason of such disagreement. The doing of the work by the Contractor in accordance with such judgment of the Architect shall not be deemed an acceptance by the Contractor of such construction of the plans or specifications and, in the event that the Contractor so desires, the question as to the true construction of such plans and specifications, in any instance, shall be the subject of arbitration as hereinafter provided, for the purpose of determining the disagreement; and, if the question is decided in favor of the Contractor, and the cost of doing the work in accordance with the judgment of the Architect shall have been more expensive than

the method contended for by the Contractor (which question shall also be the subject of the same arbitration), the Contractor shall be deemed to have performed this contract for so much less as is represented by such excess in cost. But nothing herein contained shall be construed so as to deprive the Contractor of such costs and its profit of ten (10%) per cent. (as hereinafter provided), upon such excess in cost.

3. No alterations shall be made in the work except upon written order of the Architect.

4. The Contractor agrees to provide the usual facilities at all times for the inspection of the work by the Architect or its authorized representatives; and within twenty-four hours after receiving written notice from the Architect to that effect to remove from the ground and buildings all materials condemned by it, whether worked or unworked, and to take down all portions of the work which the Architect shall by like written notice condemn as unsound or improper, or as in any way failing to conform to the drawings and specifications, and shall make good all work damaged or destroyed thereby. The question whether work or material condemned by the Architect was properly condemned may upon written demand of the contractor be referred to arbitration as hereinafter provided. If the question is decided against the Contractor he shall pay the cost of the removal and replacement and the cost of the material and work and this cost shall not be charged against the Owner; but if said question is decided in favor of the Contractor, the cost of the removal and replacement and the cost of the material and the work shall be added to the cost of performance and shall augment \$. And in the event that the arbitrators decide said question in favor of the Contractor the time herein fixed for performance shall be extended by a period equal to the period of delay caused by such work.

5. The Contractor shall conform in all respects to all statutes, ordinances, and other regulations and requirements of all authorities having jurisdiction of the work or any part thereof, and shall procure all permits except the building permits (which building permits the Owner shall obtain at once), licenses and privileges which shall be required in the prosecution of the

work; shall restore to good and proper condition any street and part thereof, any pavement, conduit or other structure therein or thereon; and shall upon completion of the work, remove therefrom and from the premises and streets adjacent, all refuse, waste, unused material and all remaining property of the contractor, its sub-contractors, employees, agents and servants, and properly clean the said building and the said streets. The Contractor shall protect all property adjacent to or which may be affected by this operation so that no damage shall result therefrom, and shall in all respects in the performance of this contract use reasonable care and diligence to guard against and prevent accidents and injuries of every kind, both to persons and property. The Contractor shall promptly pay for all labor and services employed and for all materials furnished and as far as practicable shall cause similar prompt payment to be made by all sub-contractors. The Contractor shall use its best efforts to reduce the cost of the work to the lowest figure commensurate with the quality of materials and character of the work, as called for by the specifications.

6. Should the Contractor at any time refuse or neglect to supply a sufficiency of properly skilled workmen, or of materials of the proper quality, or fail in any respect to prosecute the work with promptness and diligence, or fail in the performance of any of the agreements herein contained, the Owner shall be at liberty, after five days' written notice to the contractor, to provide any such labor and materials, and to deduct the damage caused thereby from any money then due or thereafter to become due to the Contractor under this contract; and the owner shall also be at liberty to terminate the employment of the Contractor for the said work and to enter upon the premises and take possession, for the purpose of completing the work included under this contract, of all materials, tools and appliances thereon, and to employ any other person or persons to finish the work, and to provide the materials therefor; and in case of such discontinuance of the employment of the Contractor, it shall not be entitled to receive any further payment, under this contract until final completion of the building, on which date the Contractor shall receive whatever balance may remain after deducting from the Contractor's profit and cost of

performance to the date of discontinuance, all damage incurred through the default of the Contractor as aforesaid.

7. Should the Owner desire, at any time during the progress of said work, to make any alterations or deviations from, or additions to, the plans or specifications, or from the requirements under this agreement so far as relates to matters or work to be done or materials to be furnished by the Contractor, the Owner shall be at liberty to do so and the same shall in no way make void this agreement. For all the extra work caused by such alterations, deviations or additions, the Owner shall pay the Contractor, in addition to the contract price herein mentioned, the cost to the Contractor of such extra work, including overhead cost, plus ten (10%) per cent. of such total cost; and, in determining the total cost of performance of this contract, for the purpose of ascertaining the amount to which the contractor's extra compensation of 50% shall apply, the cost of such extra work shall not be taken into consideration.

8. (a) The Contractor shall not assign this contract without the written consent of the Owner.

(b) All or any portion of the work covered by this contract may be sublet by the Contractor; but all sub-contracts shall, when practicable, be made upon the basis of competitive bids. Provided, however, that the Contractor shall not be required to obtain the bids of any but reputable firms, persons or corporations; and provided, further, that if the Contractor deems it inadvisable to accept the lowest bid, he may award the sub-contract to the next lowest bidder; and provided, further, that the contractor shall not be required to employ a sub-contractor against whom it has a reasonable objection. Copies of all sub-contracts shall be furnished to the Architect for its convenience.

(c) If the Contractor shall cause any part of this contract to be performed by a sub-contractor, the provisions of this contract shall apply to said sub-contractors and his or its officers, agents and employees in all respects as if he or it and they were employees of the Contractor and the Contractor shall not be in any manner thereby discharged from its obligations and liabilities hereunder, but shall be liable hereunder for all acts and negligence of the sub-contractor, his or its officers, agents and em-

ployees as if they were the employees of the Contractor. Final payment to any sub-contractor shall be made not later than thirty (30) days after the completion of this contract and acceptance in writing of the work by the Architect.

9. The Contractor agrees to indemnify the Owner against and save it harmless from all loss and damage (including damage to person or property) arising from the failure of the Contractor or those acting under it to conform to the statutes, ordinances or other regulations or requirements of any governmental authority, or arising from anything done by or negligence of the Contractor or its sub-contractors or the officers, agents or employees of either while engaged in the performance of this contract, or while in or about said building or premises, or arising from accident or any injury (provided the same be not caused by act of the Owner, his agents or servants, or any one employed by the Owner other than this Contractor) to any sub-contractor or any officer, agent or employee of a sub-contractor while engaged in or about the performance of this contract, or while in or about said building or premises, or arising from the alleged infringement of any patent rights in the performance of said contract, or arising from liens or claims for services rendered or labor or materials furnished in or for the performance of this contract. The Owner shall, during the continuance of this agreement, be liable, responsible and accountable to the Contractor for any loss, injury or damage which shall or may happen to the work done or to the materials supplied or other things used or employed by the Contractor on or about said premises or in or about said building when caused by the Owner, its agents and servants, and shall be responsible, answerable and accountable during the continuance of this agreement for, or for the consequence of, any act or acts, omission or omissions or negligence of any other Contractor employed by the Owner or the sub-contractor of such Contractor, their workmen, servants or employees, engaged in or about such building, and for any injury or damage thereby happening to person or property, or work done or materials furnished to the Contractor hereunder, or any one employed under said Contractor.

10. The Owner shall pay to the Contractor as the consideration and price for the performance of this contract a sum equal

to the actual cost thereof, plus ten (10%) per cent. of such cost for the Contractor's services and profit; but the total compensation of the Contractor hereunder shall not exceed \$....., exclusive of all extra work, for which the Contractor shall receive extra compensation as hereinafter provided.

I. The following items shall be included in the cost of performance of this contract, but such enumeration shall not in any manner limit or restrict the actual cost of performance:

(a) Expense paid for labor, and incurred in the purchase and delivery of all materials required under this contract, and removal after completion of all unused and surplus materials, and delivery and removal of tools, machinery and plant in connection with the work, and incurred in the superintendence of construction, and for patent rights for things which become part of said building or its equipment, or which are used during its construction, and for official fees and other permits, and for insurance to protect the owner and the contractor against loss, which insurance shall consist of workmen's compensation insurance, and adequate liability insurance to protect the Contractor and Owner against liability for damage or injury to persons and/ or property.

(b) The amount paid for apparatus hired or rented.

(c) Expense of the employees of Contractor's field office.

(d) The cost of value (at the option of the Contractor) of all plant, horses, lumber, timbers, tools, machinery and implements used in connection with said works.

II. On completion of the works on said premises and said building, the Contractor shall remove from the premises all such plant, horses, timber, tools, machinery and implements as are in serviceable condition, crediting the owner with fifty (50%) per cent. of the cost or value (at the option of the Contractor) thereof, as originally charged hereunder. No credit shall be given to the Owner, however, for any lumber or timber which is under ten (10) feet in length.

III. There shall not be included in the cost of performance any interest on moneys, office rent, the services of any walking or visiting superintendent or any officer of the Contractor, nor the clerical or engineering services of the general office of the Contractor except as hereinbefore provided; and in determining

the actual cost of articles, materials or items of every kind covered by this agreement, such articles, materials or items as are the subject of unpaid bills accompanying requisitions of the Contractor shall be taken at their net cost to the Contractor, and such articles, materials or items as are the subject of paid bills accompanying requisitions of the Contractor shall be taken at their gross cost thereof, without deduction for cash or trade discounts, rebates, allowances, credits or bonifications, (provided only that the owner shall have been given an opportunity of advancing the amount of the payment and of obtaining the discount).

IV. The Owner shall pay the Contractor's compensation in lawful money of the United States, as follows:

(a) On or about the fifteenth day of each and every month as the work progresses, the Contractor shall by due and proper requisition delivered to the Architect, specify the amounts paid for all the labor and the costs of all materials furnished during the preceding month, including cartage and labor in connection therewith, and also insurance premiums for insurance theretofore obtained, official fees, and cost of permits, expenses of Contractor's field office, and also the cost or value (at Contractor's option) of machinery theretofore delivered, including plant, and the reasonable hire or rental of apparatus theretofore incurred, and any other cost of performance. The Architect shall, within six (6) days thereafter, certify to the Owner the correct amount due the Contractor under the requisition, and the Owner shall pay to the Contractor the amount so certified on such requisition forthwith after the certification by the Architect, such certificate to specify that the labor and materials charged have actually been supplied by the Contractor and are then included in the construction or are located upon the premises, and that said other costs have been incurred, and that the cost or value thereof is proper. The Owner may, if it so desires, require the Contractor to exhibit paid invoices or receipts evidencing actual payment, which invoices or receipts shall remain the property of the Contractor; but nothing herein contained shall be construed so as to require the Contractor to pay any bills, accounts or expenses, except for labor performed, before being entitled to receive payment as the work progresses.

If the Owner should fail to pay to the Contractor, within five days of its maturity and presentation, any sum due it as a payment under this contract, or awarded by arbitrators, or if the Architect should fail to pass upon and certify to the Owner any requisition submitted to him as herein provided, then the Contractor may, upon five days' written notice to the Owner, stop work or terminate this contract and recover from the Owner payment for all work executed and any loss sustained upon any plant or material, and profit and damages.

(b) Upon the substantial completion of the work and within thirty (30) days thereafter the Architect shall certify such fact to the Owner, and if there are not then any amounts due and unpaid to sub-contractors, laborers, or material men, and if there are no mechanics' liens or other similar charges against the premises or the building, arising out of any fault or default on the part of the Contractor, which have not been disposed of by bond or otherwise, and upon the thirtieth day after completion, provided that such final certificate shall have been theretofore obtained, the Owner shall pay to the Contractor the final payment, which final payment shall include said Contractor's profit of ten (10%) per cent., the Contractor's additional percentage, as provided in the next succeeding subdivision of this paragraph, and any and all sums to which the Contractor may be entitled hereunder.

(c) In the event that the aggregate of the actual cost to the Contractor of performance of this contract and said profit of ten (10%) per cent. shall amount to less than, exclusive of compensation for extra work, the Contractor shall receive from the Owner as additional compensation, fifty (50%) per cent. of the difference between \$. and such actual cost plus ten (10%) per cent.

11. If at any time there shall be asserted any mechanic's lien for which, if established, the Owner might become liable, and which is chargeable to the Contractor, the Owner shall notify the Contractor thereof; and if the Contractor shall not, within fourteen days thereafter, have bonded or otherwise disposed thereof, the Owner shall have the right to retain out of any payment then due or thereafter to become due, an amount sufficient to completely indemnify itself against such lien or

claim. Should there prove to be any such claim after all payments are made, the Owner shall notify the Contractor thereof, who shall have the right to use its endeavors to dispose of or to dispute or resist such claim, and the Owner shall render all assistance to the Contractor to that end; and should the Owner be compelled to pay any moneys in discharge of any such claim, made obligatory in consequence of the Contractor's default, the Contractor shall refund to the Owner all moneys that the Owner may be compelled to pay.

12. The Contractor shall keep full, accurate and careful account of all supplies and materials acquired by it for use under this contract, and shall also keep in separate accounts a full, accurate and careful record of all labor employed in, about or in connection with such work under this contract, and the Owner shall have the right to be exercised at its discretion, at any time or times during the progress of said work and until full payment hereunder, by its duly accredited agent to inspect the books, papers, records and accounts of the Contractor with respect to such supplies, materials and time, and to inspect such supplies and materials and check up such supplies and materials.

13. No certificate given or payment made under this contract, except the final certificate or final payment, shall be conclusive evidence of the performance of this contract, either wholly or in part, and no payment except the final payment shall be construed to be an acceptance of defective work or improper materials.

14. In case the Architect and the Contractor fail to agree in relation to matters respecting payment, or the true construction or meaning of the plans or specifications, or as to defective work or materials as hereinbefore mentioned, or as to whether the Contractor is entitled to the final certificate of performance, or protection of or damage to work, or should any dispute arise in respect of any extension of time, such questions shall be determined by arbitration. The Contractor agrees to prosecute the work with promptness and diligence during the arbitration proceedings. The parties may agree upon one arbitrator; otherwise there shall be three, one named in writing by each party and the third chosen by these two arbitrators, no one of whom shall have been or shall be connected with the work cov-

ered by this agreement. If said two arbitrators fail to select a third within five days, he shall be chosen by the president of the New York Society of Architects. Should the party demanding arbitration fail to name an arbitrator within three days of its demand, its right to arbitration shall lapse. Should the other party fail to choose an arbitrator within such three days, then the party demanding arbitration shall deliver a notice in writing to the party so failing, and requesting said party to choose an arbitrator, as provided in this paragraph, and if said party shall fail to choose such arbitrator and to notify the other in writing of such selection within twenty-four hours after the receipt of such notice, then the Architect shall appoint one in its stead with the same power as though he had been appointed by said party. The arbitrators shall act with promptness. The decision of any two shall be binding on all parties to the dispute. The expense of such arbitration shall be borne by the party against whom the award is made.

15. (a) The Contractor agrees that its work hereunder shall be substantially completed according to the plans and specification on If the Contractor be delayed in the completion of the work by any act or neglect of the Owner on the Architect, or of any employee of either, or by any other Contractor employed by the Owner, or by changes ordered in the work, or by weather conditions, or by strikes, lockouts, fire, unusual delay by common carriers, unavoidable casualties or any causes beyond the Contractor's control, or by delay authorized by the Architect pending arbitration, or by any cause which the Architect shall decide to justify the delay, then the time of completion shall be extended for a period equivalent to the time lost, or additional time properly required on account of and by reason of any or all of the causes aforesaid. Provided, however, that if the Contractor shall be delayed for a period of three months through any act or fault of the Owner, then the contractor may stop work and terminate this contract, and recover from the owner payment for all work executed and materials delivered, including said Contractor's profit, overhead charge prorated to the time of such termination, and any loss sustained upon any plant or material, and damages.

(b) In the event that said building is wholly, or partially

but substantially, destroyed while in the course of construction by fire, lightning, earthquake, cyclone or tornado, flood, act of God or of the elements, or by any other causes beyond the control of the Contractor, the time herein fixed for the completion of the work or any portion thereof shall be extended for a period equivalent to the time requisite and necessary to put the works in the stage of progress in which they were before such destruction.

(c) If the Owner shall decide not to rebuild the building or to repair any such partial destruction, it shall have the right to abandon the further prosecution of the work, on condition that it pay to the Contractor the total cost to the Contractor of performance to the date of due notice to the Contractor of such abandonment, including the said overhead charge prorated to such date, the expense of removal of the Contractor's apparatus and works, the cost of all materials delivered on the premises, or other place of storage of such materials, the cost or price of all materials or structures specially made for the said building, and any and all loss, however sustained, which the Contractor may sustain by reason of orders for materials, structures or other commodities contracted for for use in said building, plus ten (10%) per cent. of the Contractor's total cost.

(d) The Owner shall, within ten days after the happening of any of the contingencies mentioned in the foregoing subdivisions (b) and (c) of this paragraph, exercise its election as to whether it shall abandon the further prosecution of the work, or shall rebuild the building. In the event of its failure to decide and notify the Contractor within said period, it shall be deemed to have decided to abandon and to have abandoned the further prosecution of the work, as mentioned in subdivision (c) of this paragraph.

(e) In the event that the Owner shall elect to rebuild the building, or to repair such partial but substantial destruction, then and in that event the cost of such repair or rebuilding (as the case may be) shall not be taken into consideration in determining whether said sum mentioned in subdivision 4 (c) of Paragraph "X" of this agreement has been reached, and in such event also said limit of \$....., as mentioned in Paragraph "X" of this agreement shall not apply, and the

Contractor shall not be obligated to complete said building for said sum exclusive of extra work. But nothing herein contained shall be construed so as to omit from the cost of the building the cost of such repair or rebuilding; but, on the contrary, such cost shall be part of the cost of the entire works for which the Contractor shall be paid, and to which its profits of ten (10%) per cent. shall apply.

16. The Contractor shall effect and maintain such insurance as will protect it from claims under workmen's compensation acts and protect it and the Owner from any other claims for damages for personal injury, including death, and for injury to property, which may arise from its operations or from the operations of its sub-contractors under this contract. Certificates of such insurance shall be filed with the Owner, if it so require, and shall be subject to its approval for adequacy of protection.

The Owner shall effect and maintain, in the joint names of the Owner and the Contractor, by standard policies, insurance upon the entire structure on which the work of this contract is to be done and upon all materials, tools and appliances in or adjacent thereto and intended for use thereon, to at least eighty (80%) per cent. of the insurable value thereof, against all loss and damage resulting from fire and lightning. The loss, if any, shall be payable to the Owner and the Contractor, as their interests may appear. Certificates of such insurance shall be filed with the Contractor, if it so require, and shall be subject to the Contractor's approval for adequacy of protection.

17. This contract, as to its nature, validity and interpretation shall be governed by the law of the place where it was made, to wit,

18. Any notice or other paper shall be sufficiently given or served hereunder to or on either party if duly sent by registered mail, addressed as follows:

To the OWNER, at

To the ARCHITECT, at

To the CONTRACTOR, at

Any of said addresses may be changed to some other place in the said city, by written notice from the party to whom notice is to be given.

Cost Plus Contract

FORM USED BY UNITED STATES GOVERNMENT DURING WAR FOR WAR CONSTRUCTION

Contract made and concluded this day of, 1921, by and between, a corporation organized under the laws of the State of, represented by, its president, party of the first part (hereinafter called Contractor) and the United States of America, by, (hereinafter called Contracting Officer), acting by authority of the Secretary of War, party of the second part.

Whereas the Congress having declared by joint resolution approved April 6, 1917, that war exists between the United States of America and Germany, a national emergency exists and the United States urgently requires the immediate performance of the work hereinafter described, and it is necessary that said work shall be completed within the shortest possible time; and

Whereas it is advisable, under the disturbed conditions which exist in the contracting industry throughout the country, for the United States to depart from the usual procedure in the matter of letting contracts, and adopt means that will insure the most expeditious results; and

Whereas the Contractor has had experience in the execution of similar work, has an organization suitable for the performance of such work, and is ready to undertake the same upon the terms and conditions herein provided:

Now, therefore, this contract witnesseth, that in consideration of the premises and of the payments to be made as hereinafter provided, the Contractor hereby covenants and agrees to and with the Contracting Officer as follows:

Article I. Extent of the Work

The Contractor shall, in the shortest possible time, furnish the labor, material, tools, machinery, equipment, facilities, and

supplies, and do all things necessary for the construction and completion of the following work:

.....

in accordance with the drawings and specifications to be furnished by the Contracting Officer, and subject in every detail to his supervision, direction, and instruction.

The Contracting Officer may, from time to time, by written instructions or drawings issued to the Contractor, make changes in said drawings and specifications, issue additional instructions, require additional work, or direct the omission of work previously ordered, and the provisions of this contract shall apply to all such changes, modifications, and additions with the same effect as if they were embodied in the original drawings and specifications. The Contractor shall comply with all such written instructions or drawings.

The title to all work completed or in course of construction shall be in the United States; and upon delivery at the site of the work, and upon inspection and acceptance in writing by the Contracting Officer, all machinery, equipment, hand tools, supplies and materials for which the Contractor shall be entitled to be reimbursed under paragraph (a) of Article II hereof, shall become the property of the United States. These provisions as to title shall not operate to relieve the Contractor from any duties imposed hereby or by the Contracting Officer.

Article II. Cost of the Work

The Contractor shall be reimbursed in the manner hereinafter described for such of its actual net expenditures in the performance of said work as may be approved or ratified by the Contracting Officer and as are included in the following items:

(a) All labor, material, machinery, hand tools, not owned by the workmen, supplies, and equipment necessary for either temporary or permanent use for the benefit of said work; but this shall not be construed to cover machinery or equipment mentioned in section (c) of this article. The Contractor shall

make no departure from the standard rate of wages being paid in the locality where said work is being done without the prior consent and approval of the Contracting Officer.

(b) All sub-contracts made in accordance with the provisions of this agreement.

(c) Rental actually paid by the Contractor at rates not to exceed those mentioned in the schedule of rental rates hereto attached for construction plant in sound and workable condition, such as pumps, derricks, concrete mixers, boilers, clam-shell or other buckets, electric motors, electric drills, electric hammers, electric hoists, steam shovels, locomotive cranes, power saws, engineers' levels and transits, and such other equipment as may be necessary for the proper and economical prosecution of the work.

Rental to the Contractor for such construction plant or parts thereof as it may own and furnish, at the rates mentioned in the schedule of rental rates hereto attached, except as hereinafter set forth. When such construction plant or any part thereof shall arrive at the site of the work the Contractor shall file with the Contracting Officer a schedule setting forth the fair valuation at that time of each part of such construction plant. Such valuation shall be deemed final, unless the Contracting Officer shall, within five days after the machinery has been set up and is working, modify or change such valuation, in which event the valuation so made by the Contracting Officer shall be deemed final. When and if the total rental paid to the Contractor for any such part shall equal the valuation thereof, no further rental therefor shall be paid to the Contractor, and title thereto shall vest in the United States. At the completion of the work the Contracting Officer may at his option purchase for the United States any part of such construction plant then owned by the Contractor by paying to the Contractor the difference between the valuation of such part or parts and the total rentals theretofore paid therefor.

Rates of rental as substitutes for such scheduled rental rates may be agreed upon in writing between the Contractor and the Contracting Officer, such rates to be in conformity with rates of rental charged in the particular territory in which the work covered by this contract is to be performed. If the Contracting

Officer shall furnish or supply any such equipment, the Contractor shall not be allowed any rental therefor and shall receive no fee for the use of such equipment.

(d) Loading and unloading such construction plant the transportation thereof to and from the place or places where it is to be used in connection with said work, subject to the provisions hereinafter set forth, the installation and dismantling thereof, and ordinary repairs and replacements during its use in the said work.

(e) Transportation and expenses to and from the work of the necessary field forces for the economical and successful prosecution of the work, procuring labor, and expediting the production and transportation of material and equipment.

(f) Salaries of resident engineers, superintendents, time-keepers, foremen and other employees at the field offices of the Contractor in connection with said work. In case the full time of any field employees of the Contractor is not applied to said work but is divided between said work and other work, his salary shall be included in this item only in proportion to the actual time applied to this work.

(g) Buildings and equipment required or necessary field offices, commissary, and hospital, and the cost of maintaining and operating said offices, commissary, and hospital, including such minor expenses as telegrams, telephone service, expressage, postage, etc.

(h) Such bonds, fire, public liability, employers' liability, workmen's compensation, and other insurance as the Contracting Officer may approve or require, and such losses and expenses not compensated by insurance or otherwise, as are found and certified by the Contracting Officer to have been actually sustained (including settlements made with the written consent and approval of the Contracting Officer) by the Contractor in connection with said work, and to have clearly resulted from causes other than the fault or neglect of the contractor. Such losses and expenses shall not be included in the cost of the work for the purpose of determining the Contractor's fee. The cost of reconstructing and replacing any of the work destroyed or damaged shall be included in the cost of the work for the purpose of reimbursement to the Contractor,

but not for the purpose of determining the Contractor's fee, except as hereinafter provided.

(i) Permit fees, deposits, royalties, and other similar items of expense incidental to the execution of this contract, and necessarily incurred. Expenditures under this item must be approved in advance by the Contracting Officer.

(j) Such proportion of the transportation, traveling, and hotel expenses of officers, engineers, and other employees of the Contractor as is actually incurred in connection with this work.

(k) Such other items as should in the opinion of the Contracting Officer be included in the cost of the work. When such an item is allowed by the Contracting Officer it shall be specifically certified as being allowed under this paragraph.

The United States reserves the right to pay directly to common carriers any or all freight charges on materials of all kinds and machinery furnished under this contract and certified by the Contracting Officer as being for installation or for consumption in the course of the work hereunder; the Contractor shall be reimbursed for such freight charges of this character as it shall pay and as shall be specifically certified by the Contracting Officer; but the Contractor shall have no fee based on such expenditures. Freight charges paid by the Contractor for transportation of construction, equipment, construction plant, tools, and supplies of every character shall be treated as part of the cost of the work upon which the Contractor's fee shall be based, provided that charges for transportation of such construction equipment, construction plant, and tools over distances in excess of 500 miles shall require the special approval of the Contracting Officer.

No salaries of the Contractor's executive officers, no part of the expense incurred in conducting the Contractor's main office, or regularly established branch office, and no overhead expenses of any kind, except as specifically listed above, shall be included in the cost of the work; nor shall any interest on capital employed or on borrowed money be included in the cost of the work.

The Contractor shall take advantage to the extent of its ability of all discounts available, and when unable to take such

advantage shall promptly notify the Contracting Officer of its inability and its reasons therefor.

All revenue from the operations of the commissary, hospital, or other facilities or from rebates, refunds, etc., shall be accounted for by the Contractor and applied in reduction of the cost of the work.

Article III. Determination of Fee

As full compensation for the services of the Contractor, including profit and all general overhead expense, except as herein specifically provided, the Contracting Officer shall pay to the Contractor in the manner hereinafter prescribed a fee to be determined at the time of completion of the work from the following schedule, except as hereinafter otherwise provided:

.....

Provided, however, That the fee upon such part of the cost of the work as is represented by payments to sub-contractors, under subdivision (b) of Article II hereof, shall in each of the above contingencies be 2½ per cent and no more of the amount of such part of the cost.

The cost of materials purchased or furnished by the Contracting Officer for said work, exclusive of all freight charges thereon, shall be included in the cost of the work for the purpose of reckoning such fee to the Contractor, but for no other purpose.

The fee for reconstructing and replacing any of the work destroyed or damaged shall be such percentage of the cost thereof—not exceeding 7 per cent—as the Contracting Officer may determine.

The total fee to the contractor hereunder shall in no event exceed the sum of, anything in this agreement to the contrary notwithstanding.

Article IV. Payments

On or about the 7th day of each month the Contracting Officer and the Contractor shall prepare a statement showing as completely as possible: (1) The cost of the work up to an

including the last day of the previous month, (2) the cost of the materials furnished by the Contracting Officer up to and including such last day, and (3) an amount equal to $2\frac{1}{2}$ per cent., except as herein otherwise provided, of the sum of (1) and (2) on account of the Contractor's fee; and the Contractor at such time shall deliver to the Contracting Officer original signed pay rolls for labor, original invoices for materials purchased, and all other original papers not heretofore delivered supporting expenditures claimed by the Contractor to be included in the cost of the work. If there be any item or items entering into such statement upon which the Contractor and the Contracting Officer cannot agree, the decision of the contracting officer as to such disputed item or items shall govern. The Contracting Officer shall then pay to the Contractor, on or about the 9th day of each month, the cost of the work mentioned in (1) and the fee mentioned in (3) of such statement, less all previous payments. When the statement above mentioned includes any work of reconstructing and replacing work destroyed or damaged, the payment on account of the fee in (3) for such reconstruction and replacement work shall be computed at such rate, not exceeding $2\frac{1}{2}$ per cent., as the Contracting Officer may determine. The statement so made and all payments made thereon shall be final and binding upon both parties hereto, except as provided in Article XIV hereof. The Contracting Officer may also make payments at more frequent intervals for the purpose of enabling the Contractor to take advantage or discounts at intervals between the dates above mentioned of for other lawful purposes. Upon final completion of said work the Contracting Officer shall pay to the Contractor the unpaid balance of the cost of the work and of the fee as determined under Articles II and III hereof.

Article V. Inspection and Audit

The Contracting Officer shall at all times be afforded proper facilities for inspection of the work and shall at all times have access to the premises, to the work and material, and to all books, records, correspondence, instructions, plans, drawings, receipts, vouchers, and memoranda of every description of the

Contractor pertaining to said work; and the Contractor shall preserve for a period of two years after its completion or cessation of work under this contract all the books, records, and other papers just mentioned. Any duly authorized representative of the Contractor shall be accorded the privilege of examining the books, records and papers of the Contracting Officer relating to said work for the purpose of checking up and verifying the cost of said work. The system of accounting to be employed by the Contractor shall be such as is satisfactory to the contracting officer.

If at any time the Contracting Officer shall find that bills for labor, material, or other bills legitimately incurred by the Contractor, hereunder are not promptly paid by the Contractor, the Contracting Officer may, in his discretion, refuse to make further payments to the Contractor until all such obligations past due shall have been paid. Should the Contractor neglect or refuse to pay such bills within five days after notice from the Contracting Officer so to do then the Contracting Officer shall have the right to pay such bills directly in which event such direct payments shall not be included in the cost of the work.

Article VI. Special Requirements

The Contractor hereby agrees that it will:

(a) Begin the work herein specified at the earliest time practicable, and diligently proceed so that such work may be completed at the earliest possible date.

(b) Promptly pay for all labor, material, or other service rendered.

(c) Procure and thereafter maintain such insurance in such forms and in such amounts and for such periods of time as the Contracting Officer may approve or require.

(d) Procure all necessary permits and licenses, and obey and abide by all laws, regulations, ordinances, and other rules applying to such work of the United States of America, of the State or Territory wherein such work is done, of any subdivision thereof or of any duly constituted public authority.

(e) Unless this provision is waived by the Contracting Officers, insert in every contract made by it for the furnishing of it

of services, materials, supplies, machinery, and equipment, or the use thereof, for the purposes of the work hereunder, a provision that such contract is assignable to the United States, will make all such contracts in its own name, and will not bind or purport to bind the United States or the Contracting Officer thereunder.

(f) In every sub-contract made in accordance with the provisions hereof, require the sub-contractors to agree to comply with all the undertakings and obligations of the contractor, herein, excepting such as do not apply to such sub-contractor's work.

(g) At all times keep at the site of the work a duly appointed representative, who shall receive and execute on the part of the Contractor such notices, directions and instructions as the Contracting Officer may desire to give.

(h) At all times use its best efforts in all its acts hereunder to protect and subserve the interest of the Contracting Officer and the United States.

Article VII. Right to Terminate Contract

Should the Contractor at any time refuse, neglect, or fail in any respect to prosecute the work with promptness and diligence, or default in the performance of any of the agreements herein contained, the Contracting Officer may, at his option, after five days' written notice to the Contractor, terminate this contract, and may enter upon the premises and take possession, for the purpose of completing said work, of all materials, tools, equipment, and appliances, and all options, privileges, and rights, and may complete, or employ any other person or persons to complete, said work. In case of such termination of the contract, the Contracting Officer shall pay to the Contractor such amounts of money on account of the unpaid balance of the cost of the work and of the fee as will result in fully reimbursing the Contractor for the cost of the work up to the time of such termination, plus a fee computed thereon at the rate or rates for monthly payments set forth in Article IV hereof; and the Contracting Officer shall also pay to the Contractor compensation, either by purchase or rental, at the election of the Con-

tracting Officer, for any equipment retained; such compensation, in the event of rental, to be in accordance with paragraph (c) of Article II and in the event of purchase to be based upon the valuation determined by the Contracting Officer as of the time of his taking such possession. The Contractor hereby agrees that such payments when made shall constitute full settlement of all claims of the Contractor against the Contracting Officer and the United States, or either of them, for money claimed to be due to the Contractor for any reason whatsoever. In case of such termination of the contract the Contracting Officer shall further assume and become liable for all such obligations, commitments, and unliquidated claims as the Contractor may have theretofore in good faith undertaken or incurred in connection with said work, and the Contractor shall, as a condition of receiving the payments mentioned in this article, execute and deliver all such papers and take all such steps as the Contracting Officer may require for the purpose of fully vesting in him the rights and benefits of the Contractor under such obligations or commitments. When the Contracting Officer shall have performed the duties incumbent upon him under the provisions of this article, the Contracting Officer shall thereafter be entirely released and discharged of and from any and all demands, actions, or claims of any kind on the part of the Contractor hereunder or on account hereof.

Article VIII. Abandonment of Work by Contracting Officer

If conditions should arise which in the opinion of the Contracting Officer make it advisable or necessary to cease work under this contract, the Contracting Officer may abandon the work and terminate this contract. In such case the Contracting Officer shall assume and become liable for all such obligations, commitments, and unliquidated claims as the Contractor may have theretofore, in good faith, undertaken or incurred in connection with said work; and the Contractor shall, as a condition of receiving the payments mentioned in this article, execute and deliver all such papers and take all such steps as the Contracting Officer may require for the purpose of fully vesting in him the rights and benefits of the Contractor under such obliga-

tions or commitments. The Contracting Officer shall pay to the Contractor such an amount of money on account of the unpaid balance of the cost of the work and of the fee as will result in the Contractor receiving full reimbursement for the cost of the work up to the time of such abandonment, plus a fee to be computed in the following manner: To the cost of the work up to the time of such abandonment shall be added the amount of the contractual obligations or commitments assumed by the Contracting Officer, and such total shall be treated as the cost of the work, upon which the fee shall be computed in accordance with the provisions of Article III hereof. When the Contracting Officer shall have performed the duties incumbent upon him under the provisions of this article, the Contracting Officer and the United States shall thereafter be entirely released and discharged of and from any and all demands, actions, or claims of any kind on the part of the Contractor hereunder or on account hereof.

Article IX. Bond

The Contractor shall, prior to commencing the said work, furnish a bond, with sureties satisfactory to the Contracting Officer, in the sum of dollars, conditioned upon its full and faithful performance of all the terms, conditions, and provisions of this contract, and upon its prompt payment of all bills for labor, material, or other service furnished to the contractor.

Article X. Convict Labor

No person or persons shall be employed in the performance of this contract who are undergoing sentence of imprisonment at hard labor imposed by the courts of any of the several states, territories, or municipalities having criminal jurisdiction.

Article XI. Hours and Conditions of Labor

No laborer or mechanic doing any part of the work contemplated by this contract in the employ of the Contractor or any sub-contract or contracting for any part of said work contem-

plated shall be required or permitted to work more than eight hours in any one calendar day upon such work, such prohibition being in accordance with the act approved June 19, 1912, limiting the hours of daily service of mechanics and laborers on work under contracts to which the United States is a party. For each violation of the requirements of this article a penalty of \$5 shall be imposed upon the Contractor for each laborer or mechanic for every calendar day in which said employee is required or permitted to labor more than eight hours upon said work, and all penalties thus imposed shall be withheld for the use and benefit of the United States: *Provided*, That this paragraph shall not be enforced nor shall any penalty be exacted in case such violation shall occur while there is in effect any valid Executive order suspending the provisions of said act approved June 91, 1912, or waiving the provisions and stipulations thereof with respect to either this contract or any class of contracts in which this contract shall be included, or when the violations shall be due to any extraordinary events or conditions of manufacture, or to any emergency caused by fire, famine, or flood, by danger to life or property, or by other extraordinary events or conditions on account of which, by subsequent Executive order, such past violation shall have been excused.

In the event of any dispute with reference to wages, hours, or other conditions appertaining to said work, between the Contractor or any sub-contractor and labor employed by him on said work, the Contractor or sub-contractor shall immediately notify the Contracting Officer of the existence of such dispute and the reasons therefor. The Contracting Officer may, at his option, instruct the Contractor or sub-contractor involved in such dispute as to the method or steps which the Contractor or sub-contractor should follow with reference thereto, and the Contractor or sub-contractor shall thereupon comply with such instructions.

Article XII. Right to Transfer or Sublet

Neither this contract nor any interest therein shall be assigned or transferred. The Contractor shall not enter into any

sub-contract for any part of the work herein specified without the consent and approval in writing of the Contracting Officer. In case of such assignment, transfer, or subletting without the consent and approval in writing of the Contracting Officer, the Contracting Officer may refuse to carry out this contract either with the transferrer or transferee, but all rights of action for any breach of this contract by the Contractor are reserved to the United States.

Article XIII. No Participation in Profits by Government Officials

No member of or Delegate to Congress or Resident Commissioner, nor any other person belonging to or employed in the military service of the United States, is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but this article shall not apply to this contract so far as it may be within the operation or exception of section 116 of the act of Congress approved March 4, 1909 (35 Stats., 1109).

Article XIV. Settlement of Disputes

This contract shall be interpreted as a whole and the intent of the whole instrument, rather than the interpretation of any special clause, shall govern. If any doubts or disputes shall arise as to the meaning or interpretation of anything in this contract, or if the Contractor shall consider itself prejudiced by any decision of the Contracting Officer made under the provisions of Article IV hereof, the matter shall be referred to the officer in charge of cantonment construction for determination. If, however, the Contractor shall feel aggrieved by the decision of the officer in charge of cantonment construction, it shall have the right to submit the same to the Secretary of Wars whose decision shall be final and binding upon both parties, hereto.

Article XV

This contract shall bind and inure to the Contractor and its successors.

It is understood and agreed that wherever the words "Con-

tracting Officer" are used herein the same shall be construed to include his successor in office, any other person to whom the duties of the contracting officer may be assigned by the Secretary of War, and any duly appointed representatives of the contracting officer.

Witness the hands of the parties hereto the day and year first above written, all in triplicate.

Contract between Contractor and Owner for Excavation.

AGREEMENT made.....between.....hereinafter called the Contractor, and.....hereinafter called the Owner, WITNESSETH, as follows:

1. The Contractor agrees in consideration of the mutual promises herein contained, that he will to the satisfaction of the Owner, excavate the premises shown on the following diagram in the manner herein indicated. The plot shown in yellow is to be excavated to a depth of.....feet.....inches below the level of the curb at the point marked X in the diagram. The plot shown in red is to be excavated to a depth of...feet below the level of the curb. The plot marked blue is to be excavated to the level of the curb.

2. The Contractor agrees to prepare the ground for the erection of a building thereon in accordance with plans heretofore prepared and exhibited to the Contractor, and the Contractor agrees that he will furnish all the necessary men, teams, drills, machinery, labor and materials necessary for that purpose.

3. The Contractor agrees that he will commence work on or before.....and will at all times have at least teams constantly at work on the job and at least.....steam drills.

4. The Contractor agrees that the whole job shall be completed in.....working days, time being of the essence of the contract.

5. It is agreed that in case the said work is not so completed within.....working days the Contractor shall pay to the Owner the sum of.....dollars per day as liquidated damages for such delay as may be caused.

6. The Contractor agrees at his own cost and expense to remove all the debris, rock and earth from the said lot except that he shall leave sufficient stone to erect foundations and the stone work of the said building. The Contractor agrees to remove all the rock that is not required by the Owner for such purpose, unless specially requested by the Owner to do otherwise.

7. The Owner agrees to pay and the Contractor agrees to accept for said work \$. per cubic yard of rock removed andcents per cubic yard of earth removed according to measurements made by a surveyor appointed by the Owner. Payments are to be made on surveyor's certificates.

8. It is agreed that the Owner shall be at liberty to require extra excavation to be done where necessary at the same rate of payment.

9. It is agreed that the rock and stone left for foundation shall be broken in a suitable and proper size for that purpose.

10. The Owner agrees on condition of the faithful performance on the part of the Contractor of the promises and conditions on his part to be performed, that he will pay for such excavation to the said Contractor at the rate of \$. per cubic yard of rock and.cents per cubic yard of earth, such payment to be made as follows:

.per cent. of the value of the work done to date shall be paid for at the end of every.weeks, and a final payment of the remaining.per cent of the whole work shall be paid in.days after the completion of the contract.

11. The Contractor agrees that the Owner shall be entitled to retain out of the moneys owing to the Contractor sufficient amounts to insure him against any mechanics' liens that may be filed against the said premises.

12. The Contractor agrees to be responsible, and hereby assumes any and all liability for any damage or injury sustained by any person during the progress of the work, and for any act or default of the Contractor or any of his employees.

13. The Contractor agrees that if he shall be in default at any time during this agreement or unreasonably neglect or

refuse to continue work hereunder as herein provided, the Owner shall have the right on.....days' written notice to the Contractor at his last known place of residence, to complete the work and charge the cost thereof against the Contractor who agrees to pay all damage sustained by reason of his default.

Building Contract Between General Contractors and Sub-Contractor

AGREEMENT, made the.....day of..... in the year.....by and between(acting as Agents of the Owner) hereinafter designated the General Contractors, and.....hereinafter designated the Sub-Contractor.

WITNESSETH that the Sub-Contractor in consideration of the covenants and agreements herein contained on the part of the General Contractors, does covenant, promise, and agree with the said General Contractors as follows:

1. The Sub-Contractor shall and will well and sufficiently perform and finish in a thoroughly workmanlike manner under the direction and to the satisfaction of the General Contractors and.....Architects (acting as Agents of the Owner,.....) all and everything called for in specifications, entitled:.....for.....in the City of.....agreeably to the drawings and specifications, made by the said Architects (copies of which have been delivered to the Sub-Contractor), and to the dimensions and explanations thereon, therein and herein contained, according to the true intent and meaning of said drawings and specifications, and of these presents, including all labor and materials incident thereto, and shall provide, at his own expense, all

ladders, scaffolding, implements, apparatus, moulds, models, hoisting and cartage necessary for the due performance of the said work or works.

2. The Architect or the General Contractors shall furnish to the Sub-Contractor drawings and explanations necessary to detail and illustrate the work to be done, and the Sub-Contractor shall conform to the same as part of this contract, and in the event of any doubt or question arising respecting the true meaning of the drawings and specifications, the decision of the Architect thereon shall be final and conclusive. It is mutually understood and agreed that all drawings and specifications are and remain the property of the Architect, and upon the completion of the work, are to be delivered to the General Contractors.

3. No alterations shall be made in the work or materials shown or described by the drawings and specifications, except upon a written order of the General Contractors, and when so made, the value of the work and materials added or omitted shall be computed and determined by the General Contractors, and the amount so determined shall be added to or deducted from the contract price, as hereinafter provided. In case of dissent by either party hereto from such determination of the General Contractors the valuation of the work and materials added or omitted shall be submitted to two disinterested Arbitrators, one to be appointed by each of the parties to this contract, and the Arbitrators so chosen shall, if themselves unable to agree, choose a third without unnecessary delay, and the decision in writing signed by those assenting thereto of any two of the Arbitrators, shall be final and binding on the parties hereto, and each of the parties hereto shall pay one-half of the expenses of such reference. The determination and adjustment in the manner aforesaid of the value of any work or materials to be added to or deducted from the contract price, shall be a condition precedent to the right to demand and receive the value of any additional or extra work and materials, or to demand and have deducted from the contract price the value of any omitted work and materials, and no action will lie for the value thereof until the condition has been performed.

4. The Sub-Contractor shall provide, both in the shops and at the building, sufficient, safe and proper facilities, at all times, for the inspection of the work by the Owner, Architect and General Contractors, or the authorized representatives of any of them, and must, upon request of the General Contractors, produce all vouchers showing quality of material used. The Sub-Contractor shall, within twenty-four hours after receiving written notice from the General Contractors to that effect, at his own cost and expense, proceed to remove from the grounds or building all materials condemned by the Architect or General Contractors, whether worked or unworked, and to take down all portions of the work which the Architect or General Contractors shall, by like written notice, condemn as unsound or improper, or as in any way failing to conform to the drawings and specifications. Work done or materials furnished by any Sub-Contractor and not approved by the Architect and General Contractors shall not be accepted.

5. Should the Sub-Contractor at any time refuse or neglect to supply a sufficiency of properly skilled workmen or of materials of the proper quality and quantity, or fail in any respect to prosecute the work with promptness and diligence, or fail in the performance of any of the agreements on his part herein contained, the General Contractors shall be at liberty, after three days' written notice to the Sub-Contractor to provide any such labor or materials, and to deduct the cost thereof from any money due or thereafter to become due to the Sub-Contractor under this contract; and the General Contractors shall also be at liberty to terminate the employment of the Sub-Contractor for the said work, and to enter upon the premises and take possession of all materials and appliances of every kind whatsoever thereon, and to employ any other person or persons to finish the work, and to provide the materials therefor; and in case of such discontinuance of the employment of the Sub-Contractor, he shall not be entitled to receive any further payment under this contract until the said work shall be wholly finished, at which time, if the unpaid balance of the amount to be paid under this contract shall exceed the expense incurred by the General Contractors in finishing the work, such excess shall be paid by the General

Contractors to the Sub-Contractor, but if such expense shall exceed such unpaid balance, the Sub-Contractor shall pay the difference to the General Contractors. The expense incurred by the General Contractors as herein provided, either for furnishing materials or for finishing the work, and any damage incurred through such default, shall be audited and certified by the Architect, whose certificate thereof shall be conclusive upon the parties.

6. The Sub-Contractor shall and will proceed with the said work, and every part and detail thereof in a prompt and diligent manner, and shall and will do the several parts thereof at such times and in such order as the General Contractors or Architect may direct, and shall and will wholly finish the said work according to the said drawings and specifications, and this contract, in.....calendar days from date

.....
and in default thereof the Sub-Contractor shall pay to the General Contractors the sum of \$.....for every day thereafter that the said work shall remain unfinished, as and for liquidated damages. The Sub-Contractor further agrees to have his materials and manufactured products ready, and to begin work at the building within three days from the time that the building is ready to receive such work.

7. The Sub-Contractor shall not cause any unnecessary hindrance or delay to other contractors on said building, and shall bear all damages done to the work of such other contractors by his employees. Should the Sub-Contractor be obstructed or delayed in the prosecution or completion of the work by the neglect, delay or default of the Owner, the Architect, the General Contractors or of any other contractors employed by them upon the work, or by alterations which may be required in said work, or by any damage which may happen by fire, lightning, earthquake or cyclone, or by the abandonment of the work by the employees through no fault of the Sub-Contractor, then the time herein fixed for the completion of the work shall be extended for a period equivalent to the time lost by reason of any or all of the causes aforesaid, but no such allowance shall be made unless a claim therefor is presented in writing to the General Contractors within twenty-

four hours after the occurrence of such delay. The General Contractors shall award and certify, in writing, the amount of additional time to be allowed. The Sub-Contractor may appeal from said award to arbitrators constituted as provided in paragraph 3 of this contract.

8. The General Contractors will not, in any manner, be answerable or accountable for any loss or damage that shall or may happen to the said works, or any part or parts thereof respectively, or for any of the materials or other things used and employed in finishing and completing the said works; or for injury to any person or persons, either workman or the public, or for damage to adjoining property, caused by the Sub-Contractor or his agents, or by anyone employed by him. The Sub-Contractor further agrees to carry insurance for his own account of sufficient amount to cover any loss or damage that may become due on account of injuries happening to his employees, or to any other person, caused by or in connection with the operations of the Sub-Contractor under this contract, the policies therefor to be exhibited to the General Contractors whenever requested. The Sub-Contractor further agrees to deliver to the General Contractors within five days after the signing of this contract and before commencing any work thereunder a certificate from the insurance carrier showing the name of such company, the date of expiration of the policies, and the limit of liability thereunder, which certificate shall recite that five days' written notice will be given to the General Contractors, should such policies be cancelled or changed during their term. And the Sub-Contractor further agrees that he will, during the performance of this work, place proper guards around the same for the prevention of accidents, and that he will indemnify and save harmless the Owner and General Contractors, from any and all loss, damages or expense which they may sustain or to which they may be put by reason of injury to the person or property of another arising out of the performance of this work, or by, or on account of any act or omission of the Sub-Contractor or his agents; and the Sub-Contractor further agrees that so much of the moneys due under this agreement as may be considered necessary for the General Contractors, may be retained by the General

Contractors until all such suits or claims for damages as aforesaid shall have been settled. The General Contractors will not be answerable or accountable for violation of any letters patent or patent rights, or any infringement thereof by the Sub-Contractor, or by reason of the use by the Sub-Contractor of any art, machine, manufacture or composition of matter on said works in violation of any patent or patent rights or infringement thereof against all which injuries and damages to persons and property the Sub-Contractor having control over such work must properly guard and hold the General Contractors harmless and must make good all damage from whatever cause, being strictly responsible for the same. Where there are different contractors employed on the works, each shall be responsible to the other for all damage to work, to persons or property or for loss caused by neglect, by failure to finish work at proper time and preventing each portion of the works being finished by the several Sub-Contractors, in the time named in this contract for completion, or from any other cause; and any Sub-Contractor suffering damage shall call the attention of the General Contractors to the same, for action as laid down in paragraph 3 of this contract.

9. The Sub-Contractor shall, at his own cost and expense, apply for and obtain all necessary permits and the Sub-Contractor further agrees that all work performed and all materials furnished by him under this contract shall comply strictly with the laws and ordinances in force in the locality in which the building is erected, and that he will comply promptly with all ordinances, regulations, rules and orders of the city government and of any and all of its departments and bureaus, and that he will so perform said work and furnish said materials in accordance with such laws and ordinances, and so comply with such ordinances, regulations, rules and orders whether the work and materials for the same are or are not included and provided for in the plans, drawings and specifications; and all such work and materials made necessary by such laws, ordinances, regulations, rules and orders in order to complete the work contemplated in this contract, shall be performed and furnished without extra charge or expense to the General Contractors. The Sub-Contractor will be responsible for a viola-

tion of any of such laws, ordinances, rules and orders, and will indemnify the General Contractors for any loss or damage resulting to them by reason of any such violation.

10. Should the proper, workmanlike and accurate performance of any work under this contract depend in any way upon the proper, workmanlike or accurate performance of any work by another contractor on said building, the Sub-Contractor agrees to use all means necessary to discover any defects in such contractor's work, and to report the same, in writing, to the General Contractors before proceeding with his work which is so dependent; and shall allow to the General Contractors a reasonable time to remedy such defect, it being the intention of the parties hereto that the entire work on said building shall be properly performed in a workmanlike manner.

11. The General Contractors will provide all labor and materials not included in this contract in such manner as not to delay the material progress of the work, and in the event of failure so to do, thereby causing loss to the Sub-Contractor, agree that they will reimburse the Sub-Contractor for such loss; and the Sub-Contractor agrees that if he shall delay the material progress of the work so as to cause any damage for which the General Contractors shall become liable, then he shall make good to the General Contractors any such damage—over and above any damage for general delay herein otherwise provided; the amount of such loss or damage, in either case, to be fixed and determined by the Architect, or by arbitration as provided in paragraph 3 of this contract.

12. It is hereby mutually agreed by the parties hereto that the sum to be paid by the General Contractors to the Sub-Contractor for said work and materials shall be.....
 $\frac{00}{100}$ dollars
 (\$...... $\frac{00}{100}$) subject to additions or deductions, as hereinbefore provided, and that such sum shall be paid in current funds by the General Contractors to the Sub-Contractor in monthly payments on account, not to exceed in amountper cent. of the cost of the work actually erected in the building, provided that the Sub-Contractor furnishes to the General Contractors a written requisition, on a form to be supplied by the General Contractors not less than twelve days

before payment is required, it being understood that the final payment shall be made within forty days after this contract has been completely performed and all drawings, plans and specifications have been returned to the General Contractors by the Sub-Contractor; and provided that before each payment, if required, the Sub-Contractor shall give the General Contractors good and sufficient evidence that the premises are free from all liens and claims chargeable to the said Sub-Contractor; and further that if, at any time, there shall be any lien or claim or conditional contract for which, if established, the General Contractors or the said premises might be made liable, and which would be chargeable to the said Sub-Contractor, the General Contractors shall have the right to retain out of any payment then due, or thereafter to become due, an amount sufficient to completely indemnify against such lien or claim, until the same shall be effectually satisfied, discharged or cancelled, and should there prove to be any such claim after all payments are made, the Sub-Contractor shall refund to the General Contractors all moneys that the latter may be compelled to pay in discharging any lien on said premises made obligatory in consequence of the former's default.

13. It is further mutually agreed between the parties hereto that no payment made under this contract, shall be conclusive evidence of the performance of this contract, either wholly or in part, against any claim of the General Contractors, and no payment shall be construed to be an acceptance of any defective work.

14. In case the nature of the damages or defects of any particular work or works is such that in the judgment of the General Contractors it is not expedient to have the work corrected, the General Contractors shall have the right to take such sums of money from the amount due to the Sub-Contractor, on the final settlement of the accounts as the General Contractors consider a fair and reasonable remuneration for the difference in value of the material or work furnished from that specified, or for the damage to the complete work.

15. The Sub-Contractor will insure the works to cover his interest in the same from time to time; and for any loss of the

Sub-Contractor by fire the General Contractors will not, under any circumstances be answerable or accountable; but the General Contractors may protect the works at their option by insurance to cover their interest when payments have been made to the Sub-Contractor.

16. The Sub-Contractor is to furnish a competent representative who is to be kept constantly on the ground to represent the Sub-Contractor for the purpose of receiving notices, orders, and instructions. The Sub-Contractor is also, when called upon by the General Contractors to report the general progress of the work at the building or elsewhere.

17. In case of day work all vouchers for same are to be delivered to the General Contractors at latest during the week following that in which the work may have been done, and only such day work is to be allowed for as such as may have been authorized by the General Contractors in writing to be so done.

18. The Sub-Contractor further agrees in all cases of additions and deductions, omissions or substitutions to charge or credit the amounts of same at market rates, and to furnish schedule of unit prices for the purpose of checking up requests for payment on account.

19. The Sub-Contractor shall not let, assign or transfer this contract or any part thereof or any interest therein, without the written consent of the General Contractors, and the Sub-Contractor agrees that in the event that any part of the work included in these Articles of Agreement is sub-let by him, that he will exact from his Sub-Contractor compliance with the General Conditions of the Specifications, together with all the Articles of this Agreement, and that he will execute with his Sub-Contractor a contract by which the latter shall expressly agree to this provision.

20. The Sub-Contractor shall make no claim for additional work unless the same shall be done in pursuance of written order from the General Contractors, and notice of all such claims shall be made to the General Contractors in writing before the next ensuing payment, or shall be considered as abandoned by the Sub-Contractor. Bills for any additional work shall be rendered at such time and in such form as directed

by the General Contractors. For the purpose of checking such bills, the Sub-Contractor shall upon request produce any and all data required to determine the correctness of the charges.

21. Wherever notice in writing to be given to Sub-Contractor is herein provided for, a notice mailed to the last known address of the Sub-Contractor shall be sufficient.

22. The Sub-Contractor further agrees not to display on or about the premises any sign, trade-mark or other advertisement, and to remove everything of an advertising nature when so directed by the General Contractors.

23. Before final payment is made, the Sub-Contractor agrees to execute a written guarantee for his work, agreeing to make good, without cost to the Owner or General Contractors, any and all defects due to imperfect workmanship or materials, which may appear during a reasonable time, the length of such time to be determined by the General Contractors.

24. The Sub-Contractor further agrees that all disputes arising between himself and his employees shall be adjusted according to the joint arbitration plan of the.....
.....and the representatives of the.....
as set forth in.....

25. The Sub-Contractor further agrees.....
.....
.....

And the said General Contractors hereby promise and agree with the said Sub-Contractor to employ, and do hereby employ him to provide the materials and to do the said work according to the terms and conditions herein contained and referred to for the price aforesaid, and hereby contract to pay the same at the time, in the manner and upon the conditions above set forth.

And the said parties for themselves, their heirs, executors, administrators and assigns, do hereby agree to the full performance of the covenants herein contained.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals, the day and year first written above.

COMMERCIAL CONTRACTS

LETTERS OF CREDIT ¹

Letter of Advice

(AMERICAN CONFERENCE FORM A)

1. Revocable and Unconfirmed Letter of Advice. No.....
2. New York,.....
3. Messrs.....
4.
5. Dear Sirs:
6. We are informed by.....
7. that..... has
8. opened a credit available by your drafts on.....
9., at
10. up to an aggregate amount
11. of..... (figures)
12. (words)
13. for invoice cost of.....
14. Each draft drawn and negotiated under this credit must
15. be accompanied by.....
16.
17.
18.
19. purporting to evidence and cover shipment to.....
20. Insurance to be effected by.....
21. As we have not been advised that this is an irrevocable
22. credit, it is subject to modification or cancellation by our
23. correspondent or ourselves at any time without notice,
24. and this advice, being simply for your guidance in preparing documents, conveys no engagement.
25. In any event, drafts presented on us after.....
26. will not be honored.

¹ These forms were prepared and have been approved by the Merchants' Association of New York and by a conference of other commercial organizations and banks.

- 27. All drafts drawn under this credit must be marked:
- 28. "Drawn under the.....Bank
- 29. advice No....., dated....."
- 30. The provisions printed on the back hereof are incor-
- 31. porated as a part of this advice, which otherwise is to be
- 32. construed according to the law and custom of the place
- 33. where the drafts are to be presented.

Very truly yours,

.....
.....

Credit Advice

(AMERICAN CONFERENCE FORM B)

- 1. Irrevocable and Unconfirmed Credit Advice. No.....
- 2. New York,.....
- 3. Messrs.....
- 4.
- 5. Dear Sirs:
- 6. We are informed by.....
- 7. that they have opened an irrevocable credit available by
- 8. your drafts on.....
- 9.
- 10. at.....up to an
- 11. aggregate amount of.....(figures)
- 12. (words)
- 13. for invoice cost of.....
- 14. Each draft drawn and negotiated under this credit
- 15. must be accompanied by.....
- 16.
- 17.:
- 18.
- 19. purporting to evidence and cover shipment to.....
- 20. Insurance to be effected by.....
- 21. Our correspondent advises us that their credit is irrevocable
- 22. provided the relative documents are presented and
- 23. surrendered at this office not later than.....;

- 24. they have not authorized us to confirm it and this advice
- 25. conveys no engagement on our part.
- 26. All drafts drawn under this credit must be marked:
- 27. "Drawn under the.....Bank
- 28. advice No....., dated....."
- 29. The provisions printed on the back hereof are incor-
- 30. porated as a part of this advice, which otherwise is to be
- 31. construed according to the law and custom of the place at
- 32. which the drafts are to be presented.

Very truly yours,

.....

Letter of Credit

(AMERICAN CONFERENCE FORM C)

- 1. Irrevocable and Confirmed Letter of Credit. No.....
- 2. New York,.....
- 3. Messrs.....
- 4.
- 5. Dear Sirs:
- 6. By order of.....
- 7. you are authorized to draw upon us at.....
- 8.sight up to an aggregate
- 9. amount of.....(figures)
- 10.(words)
- 11. for account of.....
- 12. for invoice cost of.....
- 13. Each draft drawn and negotiated under this credit must
- 14. be accompanied by.....
- 15.
- 16.
- 17.
- 18. purporting to evidence and cover shipments to.....
- 19. Insurance to be effected by.....
- 20. Our correspondent advises us that this credit is irrevocable

21. cable. We hereby engage that drafts drawn under and in
 22. compliance with its terms will be duly honored upon pre-
 23. sentation and surrender of the relative documents at this
 24. office not later than.....
 25. All drafts drawn under this credit must be marked:
 26. "Drawn under the.....Bank
 29. credit No.....dated....."
 30. The provisions printed on the back hereof are incorpo-
 31. rated as a part of this credit, which otherwise is to be con-
 32. strued according to the law and custom of the place at
 33. which the drafts are to be presented.

Very truly yours.

.....

**Contract for Sale of Silk Approved by Silk Association of
 America**

MEMBER OF THE SILK ASSOCIATION OF AMERICA

ORDER

Our Order No.....
 Your Order No.....

Given to.....
 (Name of Manufacturer)

(Address).....

By.....
 (Name and address of Purchaser)

TERMS.....
 Subject to Rule No. 3.

Time of Delivery.....

Shipping Instructions:—

QUANTITY	QUALITY	WIDTH	LGTH. OF PCS.	DESCRIPTION	PRICE

This contract is subject to and governed by the Rules and Regulations of The Silk Association of America to Govern Transactions Between Buyers and Sellers of Broad Silks, as approved December 8, 1920, which are hereby made a part of this contract and for convenience of reference, are printed on the back hereof.

Date.....
 Signature of Purchaser

By.....

Date.....
 Signature of Seller

By.....

RULES TO GOVERN TRANSACTIONS BETWEEN BUYERS AND SELLERS OF BROAD SILKS IN THE UNITED STATES OF AMERICA, EXCEPT WHEN OTHERWISE SPECIFIED—

As Approved by the Silk Association of America, December 8, 1920

Rule 1. *Selling Terms* shall be six per cent. ten days, sixty days dating. This means that bills are due and payable at the office of the seller, less a discount of six per cent., in seventy days from date of the invoice, the buyer having the privilege of anticipating the sixty days at the rate of six per cent. per annum within ten days from date of invoice.

Rule 2. *Overdue Bills* shall be paid upon the basis of a reduction in rate of discount, from the rate of six per cent. stated

above, of one per cent. for each thirty days or fraction thereof beyond sixty days from date of invoice, and having become due net, shall be subject to an interest charge of six per cent. per annum.

Rule 3. *Buyer's Credit.* Seller may at any time alter or suspend credit when, in his opinion, the financial condition of the buyer warrants it.

Williston—Section 575;

McLain, etc., Co. v. Trent Rubber Co., 275 Fed. 831.

Pardee v. Kanady, 100 N. Y. 121, 2 N. E. 885;

Wilton v. Berger, 196 App. Div. 121, 187 N. Y. Supp. 487;

Lyonette v. K. Wilbur Dolson, 187 App. Div. 473, 175 N. Y. Supp. 789;

Melnick v. Borden, 185 N. Y. Supp. 305;

Siegel v. Huebshman, 187 App. Div. 548, 176 N. Y. Supp. 71.

Aff'd 230 N. Y. 571—(without opinion);

Blumenthal v. Radow, 225 N. Y. 641, 121 N. E. 890;

Corn Products Refining Co. v. Fasola, 94 N. J. Law 181, 109 Atl. Rep. 504.

Rule 4. *Strikes and Casualties.* Seller shall not be liable because of late or nondelivery due to strikes, fires or other causes beyond his control.

If by reason of any of the above causes, the production of the seller shall be partially or wholly curtailed, then the deliveries may be either proportionately or wholly suspended as the case may be, and resumed upon the removal of the difficulty and continued until the entire quantity purchased hereunder has been delivered; provided that if such delay in delivery of any portion shall be for more than 30 days, the aforesaid undelivered portion may be cancelled by the buyer, who shall, when requested by seller, state in writing whether he will elect to cancel. If the total period of delay in delivery of any portion due to any of the above causes exceeds 90 days, seller shall have the right to cancel such undelivered portion.

Davids v. Hoffman LaRoche Chemical Wks., 178 App. Div. 855, 166 N. Y. Supp. 179.¹

¹ See also clauses and cases cited at pages 677-680.

Rule 5. *Deliveries.* The acceptance of shipment by a railroad or other common carrier shall constitute a delivery.

Shipment made within two weeks after specified state of delivery shall constitute good delivery.

Where deliveries are specified to be made in or during several calendar months, each month's deliveries shall constitute a separate contract, and any installment of merchandise or part thereof delivered shall be paid for in accordance with the terms of this contract, regardless of claims by either party relating to any other delivered or undelivered merchandise.

Where agreed delivery dates cover several months, without stating specific quantity for each month, the delivery shall be deemed good only if made in substantially equal parts for each month specified.

Rule 6. *Time Limit on Claims.* Goods shall not be returned or allowance made after ten days from date of receipt by customer, nor after having been cut or otherwise changed from original condition, except for defects not ascertainable at the time of delivery.

Rule 7. *Price Readjustment.* Discounts or rebates shall not be made or contract price readjusted except for causes as per these rules.

Rule 8. *Replacement.* Any goods rejected for proper cause must be replaced by seller and replacement accepted by buyer, except as hereinafter provided. Replacement must be made within 15 days after rejection has been agreed to by seller, or the right of the buyer to reject has been established by arbitration, if so ordered by the arbitrators; but where for any reason it is impossible for the seller to replace goods except at great difficulty or expense, the matter shall be determined by adjustment or arbitration in accordance with the rules of The Silk Association of America.

Rule 9. *Warranties or Modifications.* No warranties or modifications of contract shall be binding on either party unless in writing and signed by the party to be charged.

Rule 10. *Confirmations.* Orders placed with salesmen will not be binding on seller until accepted or confirmed by seller in writing.

Altkrug *v.* Whitman, 185 App. Div. 744, 173 N. Y. Supp. 669.

Rule 11. *Assortments.* Where a contract covers the sale of goods, in which colorings, designs and assortments are not determined at time of sale, seller will submit colorings and designs for acceptance from which buyer agrees to furnish assortments or make selection, but failure of buyer to assort within a specified time will not release buyer from his contract.

Mosler Safe Co. *v.* Brenner, 100 Misc. 107, 165 N. Y. Supp. 336;

Crown *v.* Chiariello, 106 Misc. 511, 175 N. Y. Supp. 167.

Rule 12. *Deferred Deliveries.* All goods in hands of seller either finished or in the gray at contract date of delivery and delivery of which is delayed by fault of buyer by reason of failure to furnish assortments, refusal to accept, or otherwise, may be billed at contract price and held at risk of buyer for delivery upon his order.

Rule 13. *Adjustment and Arbitration.* Disputes between seller and buyer arising from contracts based on these rules, shall be submitted to the Bureau of Adjustments and Complaints of The Silk Association of America. If an adjustment cannot thus be effected the matter must then be submitted to an Arbitration Committee composed of three members, one to be nominated by the buyer, one by the seller and these two shall select a third. One of the arbitrators must be an official arbitrator of The Silk Association of America and the arbitration shall be in accordance with the rules of such Association. The award shall be final and binding upon both parties.

Arbitration Law of the State of New York, Laws of 1920, Chapter 275;

Spiritusfabriek *v.* Sugar Products Company, 230 N. Y. 261, 130 N. E. 288;

In re General Silk Importing Company Inc., 198 App. Div. 16, 189 N. Y. Supp. 391.¹

¹ See also arbitration clauses and cases cited at pages 1-8.

Contract for Sale of Goods on Consignment.

Williston—Secs. 484, 446 n., 655, 720 n.;

Ludvigh *v.* American Woolen Co., 231 U. S. 522; 34 Supreme Court Reporter 161.

Collier on Bankruptcy; (12th Edition, pp. 1069 and 1149).

Agreement made between herein-
after called the Consignor, and hereinafter called
the Consignee,

WITNESSETH:

1. The Consignor agrees to deliver from time to time such goods, wares and merchandise as it in its judgment sees fit, and the Consignee agrees to accept possession of said goods, wares and merchandise upon the following terms and conditions, to wit:

2. The Consignee agrees to accept possession of the goods, wares and merchandise from the Consignor, and to hold and care for the same as the property of the Consignor, it being agreed that the title to said merchandise, or its proceeds, is always vested in Consignor, and such merchandise shall be at all times subject to and under the direction and control of the Consignor. The title to said merchandise shall pass directly from the Consignor to such person or persons to whom the same shall be sold in the manner and upon the terms herein contained.

3. The Consignee agrees to keep said merchandise fully insured for the benefit of and in the name of the Consignor in fire insurance companies approved by Consignor.

4. The Consignee agrees to sell such merchandise to such persons as they shall judge to be of good credit and business standing, and to collect for and in behalf of the Consignor all bills and accounts for the merchandise so sold, and to immediately pay to the Consignor any amount collected as aforesaid immediately upon its collection, minus, however, the difference between the price at which said merchandise so collected for has been invoiced to the Consignee and the price at which said merchandise has been sold as aforesaid by the consignee.

5. The Consignee hereby guarantees the payment of all bills and accounts for merchandise, possession of which is delivered under this agreement, and hereby agrees in case any merchandise delivered under the provisions of this agreement by the Consignor to the Consignee is not accounted for to the Consignee under the provisions of Clause 4 of this agreement, to pay to the Consignor the invoice price of said merchandise, and thereupon title to said merchandise, or to the proceeds thereof, so paid for shall pass to the Consignee and shall be exempted from the provisions of this agreement.

6. The invoices sent by the consignor to the Consignee are to be subject to the usual trade discounts of.....

7. The Consignee agrees that except in..... it will not, during the continuance of this arrangement, engage in the merchandising, in any manner, of any fabrics, except as herein provided.

8. This agreement shall continue for one year. If, for any reason, this agreement terminates, all of the merchandise, possession of which is held by the Consignee under this agreement, shall at said termination be immediately returned to the possession of the Consignor.

9. The Consignee agrees to execute any and all other documents which the Consignor shall deem advisable in order to carry out the purpose of this agreement.

10. Any breach on the part of the Consignee of any of the agreements herein contained shall, at the option of the Consignor, terminate this agreement.

Conditional Sale Agreement

Williston—Secs. 236, 507, 731, 734-738, 772, 773, 859, 961, 965, 1137, 1374, 1773, 1902.

AGREEMENT made.....between....., hereinafter described as the "Seller," and.....hereinafter described as the "Purchaser,".....

WHEREAS, the Purchaser is desirous of purchasing from the Seller certain....., title thereto to remain in the Seller until full payment has been made by the Purchaser,

NOW, IN CONSIDERATION of the mutual covenants herein contained, IT IS AGREED

1. The Seller agrees to deliver to the Purchaser,

.....

2. The Purchaser agrees to purchase and pay for said articles the prices above named.

3. Payment will be made by the Purchaser of the said total sum of \$.....as follows: \$.....in cash, receipt of which is hereby acknowledged; \$......by the payment of trade acceptances (delivered on the execution of this agreement) each dated.....and duedays,.....days.....respectively from their date, each for \$....., and (except as to the first trade acceptance) bearing 6% interest.

4. The title to the property hereby conditionally sold shall remain in the Seller until all the agreements of the Purchaser have been duly performed, and until all the trade acceptances hereunder delivered to the Seller have been duly paid. It is understood that time of payment is of the essence of this contract. The title to the said personal property shall pass to the Purchaser only in the event that all the terms and obligations of this contract and the trade acceptances herein described have been without previous default duly performed.

5. The said trade acceptances may be sold or discounted by the Seller without waiver of any rights under this contract.

6. The Purchaser will pay all charges and liens which may accrue on the said property, and he will not sell, pledge or mortgage the said property, or any part thereof, or suffer it or any part thereof to be attached or become subject to any lien, or remove it or any part thereof from his address as above stated, without the written consent of the Seller.

7. In the event of default in the payment of any trade acceptance, or in the event that the Seller shall engage an attorney to enforce collection, or to preserve and protect its rights under this agreement, the Purchaser agrees to reimburse the Seller for legal expenses, which the seller may incur, not exceeding 10% of the total balance of the purchase price remaining unpaid at the time of default. The Purchaser further agrees to reimburse the Seller for expenses incidental to such suit, includ-

ing the cost of a bond if same becomes necessary, and the Purchaser agrees that the Seller may have judgment for such amount in addition to the amount due on the purchase price or under any other clause of this agreement.

8. The Purchaser agrees to use the property delivered hereunder with reasonable care and to indemnify the Seller against any damage or physical injury done to the same, ordinary wear and tear excepted, and the Seller, its agents and servants, shall have access at all times during business hours, to said property for such purpose as in the Seller's judgment may be necessary.

9. The Purchaser will insure the property delivered hereunder for its value, for the benefit of both the Seller and the Purchaser as interest may appear.

10. In the event of total loss or destruction of said property, the Seller shall have the sole right to collect the insurance or other form of indemnity that may be payable to the Purchaser, by reason of such destruction, as its interest may appear, and the Seller shall have the same right as its interest may appear in the event of a partial loss or destruction by fire or otherwise. These provisions with respect to insurance are not in substitution for the obligation of the Purchaser on the trade acceptances herein described, except to the extent that the purchase price is thus paid. The Purchaser shall remain liable to the Seller for any unsatisfied balance of the purchase price.

11. Upon breach of any of the above covenants, or upon the, filing of a petition in bankruptcy by or against the Purchaser or upon the making of a general assignment by the Purchaser, or whenever in the opinion of the Seller the property is threatened with loss, damage or destruction of any kind, except reasonable wear and tear, or with the imposition of a lien, or adverse claim of any kind, or in case of the failure on the part of the Purchaser to make any of the said payments when due as aforesaid, the Seller may re-take possession of the said property free from all claims whatsoever, and to that end without notice to the Purchaser, the Seller is hereby authorized to enter the premises of the Purchaser, or other premises wherever said property may be found, and without legal process, take and remove said property. The Purchaser hereby waives any action for trespass or damages therefor, and the Seller in that event

may retain as consideration for the use of said apparatus and appliances any sums which may have been theretofore paid by the Purchaser. [The Purchaser hereby waives all the provisions of Sections 65, 66 and 67 of the Personal Property Law as amended to date.]

12. In the event of failure on the part of the purchaser to make any payments upon the said trade acceptances, the entire balance of the purchase price remaining unpaid, shall immediately become due and payable, the fact that the date of the maturity of subsequent payments shall not have arrived notwithstanding.

13. This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions or obligations referring to the subject-matter, other than contained herein. No waiver of any breach or of any term of this agreement shall be construed a waiver of any subsequent breach of that term or other term of the same or different nature. There may be no modification of this agreement, except in writing, executed with the same formalities as this instrument.

.....
.....

Contract Between Manufacturer and Distributor for Sale of Product—Erection of Plant—Agreement to Supply Wants of Distributors—Forfeiture of Rights of Sale—Rights to Use Trade Name—Right to Assign to Corporation.

Coca-Cola Bottling Co. v. Coca-Cola Co., 269 Fed. 796.

AGREEMENT made..... between,..... herein-after described as the "Distributor" and....., hereinafter described as the "Manufacturer," WITNESSETH:

1. The Distributor agrees to establish in the city of....., as soon as the necessary machinery and buildings can be obtained, a plant for the purpose of.....
2. This plant shall be established by the Distributor without any expense or liability of any sort against the Manufacturer.
3. The Distributors agree to prepare and put up in bottles or other receptacles, a carbonated drink containing a mixture

of the..... syrup and water charged with carbonic acid gas under a pressure of more than.....atmosphere. Said..... syrup and said water in said mixture shall be used in proportions of not less than.....ounce of syrup to.....ounces of water.

4. The Distributors agree to put up and keep and cause to be kept in sufficient quantity to supply the demand in all territory embraced in this agreement, a supply of this carbonated drink. If the Distributors, after receiving notice in writing from the Manufacturer to do so, shall not within a period ofdays from date of receiving said notice, place and keep upon sale at the point designated in said notice a sufficient stock of such preparation or mixture to supply the demand therefor, then the rights herein granted within all the territory within a radius of.....miles of said point shall be forfeited; and provided, further, that a failure on the part of the Distributors to keep and perform the conditions and provisions herein contained shall work a forfeiture of their rights hereunder.

5. The Distributors agree to buy all of the.....syrup necessary to a compliance with this agreement at a price and upon terms set forth below, directly from the Manufacturer.

6. The Distributors agree not to use any substitute or substitutes for or other syrup or substance, nor to attempt to use or imitate with any article made or prepared by them,syrup.

7. The Distributors agree not to sell or in any way dispose of without the written consent of the Manufacturer in every instance any....., except after it is carbonated and bottled.

8. In consideration of these agreements on the part of the Distributors, the Manufacturer agrees to sell to the Distributors all the.....syrup required by the Distributors, at..... (\$.....) dollar per gallon.

* * * * *

13. The Manufacturer further agrees and hereby grants to said Distributors, the sole and exclusive right to use the nameand all the trade-marks and designs for labels now owned and controlled by said party of the second part, upon

any bottles or other receptacles containing the mixture heretofore described, and the right to vend such preparation or mixture bottled or put up as aforesaid, in all the territory contained in the boundaries of the United States of America, exceptand the States of..... This right to use the name....., and the trade-mark and label furnished is to be applied only to the carbonated mixture described, and is not intended to interfere in any way with the business and use of the same as now operated by the Manufacturer, nor to apply to the soda fountain business as now operated by various parties. The rights of the Distributor under this contract may be by them transferred to a company, the formation of which is now contemplated by them to be known as the.....Bottling Company, but no transfer of their rights under this contract to any other party or parties, shall be made without the consent of the Manufacturer.

Agreement for Sale of Manufacturer's or Distributor's Products in Department Store.

Standard Fashion Co. *v.* Siegel-Cooper Co., 157 N. Y. 60, 43 L. R. A. 854, 51 N. Y. 408.

AGREEMENT made.....between....., hereinafter referred to as the Principal, and.....hereinafter referred to as the Agent, in consideration of the sum of one dollar by each to the other in hand paid, and hereby acknowledged, WITNESSETH:

1. The Agent is hereby appointed an agent for the sale offor a term of.....years from..... the date of this contract—and said term to be automatically renewed from year to year thereafter until closed by..... months notice in writing by either party to be given within thirty days after said.....years or any one year thereafter.

2. The Principal agrees to conduct at its own expense and risk a.....department on the ground floor of the said Agent's store at....., City, said Principal furnishing its own employees, such employees to be subject to the employees' rules of the Agent. The Principal further

agrees to furnish, free of charge, not less than , of the kinds sold at dollars per thousand to the Agent per annum as long as this contract continues and to print the advertisements of said Agent on front and back thereof, without charge, to be changed monthly if so desired; such to be distributed by the Agent from its store or from the counter or any other part of the business without expense to the Principal; the Agent to furnish wrapping paper and twine, free delivery and other store facilities. The Agent agrees not to sell, or allow to be sold on its premises during the duration of this contract any other make of.

3. The Agent agrees to pay over to the Principal (.) of all the moneys received from the sale of , making weekly settlements with the Principal, said Agent to make no charge for cashiering; the remaining (.) to be the remuneration of said Agent for the permission to the Principal to conduct said department.

4. The said Agent agrees to allow the use of the present fixtures and the present position for but in case a change of location should be deemed advisable, such new location shall not be less prominent nor occupy less space than the present one, except for the period between Thanksgiving and Christmas of each year.

5. The Principal agrees to assume all risk of loss by fire, water, or risk of theft or other unforeseen damage to or destruction of stock, and to hold the Agent harmless in that respect. The said Agent shall make, at the expense of the Principal, frequent mention of the fact that it is agent for the sale of the Principal's and in its daily newspaper advertisements and also shall allow reasonable display of attractive show-cards and signs furnished by the Principal and subject to the approval of said Agent at convenient places in its store, the expense of such signs to be borne entirely by the Agent.

Contract Licensing Patented Amusement Game or Device—Exclusive Rights.

Gonzales v. Kentucky Derby Co., 197 App. Div. 277, 189 N. Y. Supp. 783.

AGREEMENT made 192 , between , a New York corporation, hereinafter called the Company, and , hereinafter called (name), WITNESSETH:

In consideration of the undertaking, promises and agreements and subject to the conditions and covenants hereinafter set forth, the said parties hereto, for themselves, their successors and assigns, mutually agree as follows:

1. The said company, owner of the patent rights covering the game or device known as hereinafter mentioned, does hereby lease to the said for a term of (.) years from the date hereof, , and does grant to said all the rights and privileges to use and operate the same during the said term as hereinafter set forth.

2. The said Company agrees to install said device or game, or cause the same to be installed with complete equipment, ready for operation, on or before , on premises to be furnished by the said , on the thoroughfare known as , and agrees to provide a license for said and pay the license fee therefor required by the municipal authorities.

3. The said agrees to pay to the said Company, for the use of said game or device, and the rights and privileges hereinafter set forth, the sum of (\$) dollars, payable as follows:

- (a)
- (b)
- (c)

4. The said Company agrees that it will not itself, operate or sell or lease to any other person, firm or corporation, any other game or device, to be operated on the thoroughfare known as during the season of or as long thereafter as the said wishes to have the

exclusive right to operate the same game or device on said thoroughfare, as hereinafter provided.

5. The said agrees to furnish a suitable place for the installation of said game or device, on the thoroughfare known as, with proper electric connections for said installation, and agrees to operate such game or device at no other place on except on the said thoroughfare known as during the said season of

But, in the event that the Municipal or other authorities should, for any reason, prevent the said from operating said game or device on said thoroughfare during the said season of, or if it shall become impracticable, or unprofitable, for any reason to operate said game or device on said thoroughfare during said season then the said may, at his own expense remove such game or device from said thoroughfare, and operate same at any other place in any part of the United States where the said Company is not at that time operating a similar game or device, or has not at that time given to any other person, firm or corporation the exclusive right to operate any similar game or device.

6. At the close of the said season of, the said may remove the said game or device from the said, and operate the same in any other place in any part of the United States where the said Company is not at that time operating a similar game or device, or has not at that time given to any other person, firm or corporation the exclusive right to operate any similar game or device.

7. The said agrees to conduct the said game or device in a lawful and orderly manner and to comply with all Municipal ordinances and regulations in respect to the same, and agrees that any coupon or certificate given by the said to any customer, as evidence of the winning of a race, shall be marked, so as to indicate that the same is given at the game or device operated by the said, and not at any game or device operated by the said Company, or by any other person, firm or corporation, which may be operating a similar game or device, at any other place.

8. The said Company agrees to furnish the said during the term of this agreement, all spare and repair parts,

which may be required, and all improvements, which may be hereafter made in connection with the said game or device, at the cost price thereof, plus.....%.

9. It is mutually agreed that the said.....may at his option obtain from the said Company the exclusive right to operate said game or device on the said thoroughfare referred to as the....., for season of....., and for the seasons subsequent thereto, upon giving notice in writing to the said Company of his election to exercise such option at the office of said Company at New York City on or before the 1st day ofin each and every year, beginning with the year....., and upon paying or tendering to the said Company the sum of \$.....at the time of giving said notice. But in the event that the said.....fails to exercise this option in any one year, this option shall cease for all subsequent years, but the other provisions of this agreement shall continue to remain in full force and effect until the expiration thereof.

Patents—License Agreement to Manufacture and Sell Commodity—General Form

Williston—Secs. 607n., 1446, 1642, 1649, 1652, 1661, 1934n.

AGREEMENT made.....between..... hereinafter described as the “Licensor,” and..... hereinafter described as the “Licensee,” WITNESSETH:

WHEREAS, the Licensor is the sole owner, saving and excepting existing licenses thereunder, of all the right, title and interest in, to and under Letters Patent of the United States, No....., granted....., to the Licensor as assignee of....., for Apparatus for....., and in, to and under the following additional Letters Patent of the United States, and applications for Letters Patent of the United States, namely:and

WHEREAS, the Licensee is desirous of obtaining a license, not exclusive, to manufacture, use and sell under said patents and applications for patents, and patents to be granted upon said applications.

Now, THEREFORE, for and in consideration of the sum of

One Dollar (\$1.00) from each of the said parties to the other paid, and of other considerations from each party to the other party moving, the receipt whereof is hereby acknowledged, the parties hereto have agreed and do hereby agree as follows:

1. The Licensor hereby grants to the Licensee, and to its successors and assigns upon the terms and conditions and with the limitations hereinafter set forth, a non-exclusive license for the remainder of the term of the aforesaid Letters Patent No....., or any reissue, division, or extension thereof to make, use and sell, under all of the aforesaid Letters Patent, and under any reissues, divisions, or extension thereof, and under any patent or patents that may be granted upon the said applications or any of them.

2. The Licensee hereby agrees that during the continuance of this license it will not make, use or sell any..... machine or apparatus except as above limited.

3. The Licensee agrees to pay to the Licensor, or its successors or assigns, a license fee or royalty upon each and every, apparatus or appurtenance made, sold, leased or put into use by it (except such as are used directly by the Licensee second part for demonstration purposes) within a period of.....years from the date of this license, the sum of.....per cent of the net bona fide wholesale selling price thereof on sales made by the Licensee at wholesale, andper cent, of the actual bona fide net selling price thereof on sales made by the Licensee at retail direct to purchasers; the said royalty to be paid quarterly within thirty days after the end of each quarterly period, the first quarter to begin with the first day of.....,, and to end on the last day of.....,

6. The said.....apparatus or appurtenances are to include only the following equipment, namely:.....
.....
.....

5. And the Licensee agrees to render statements duly verified by its proper officer, at each of the times stated for payment, showing all.....apparatus or other articles above enumerated or included which the Licensee has made, sold, leased or put into use (except such as are used

directly by the Licensee for demonstration purposes) within the quarter which the statement covers, and to keep full, accurate and complete books of account respecting the said business, and to give the Licensor, or its duly authorized representatives, the privilege of inspecting or examining said books of the Licensee at all reasonable times for the purpose of verifying said quarterly statements and determining the correctness of the said quarterly payments.

6. The Licensee hereby covenants and agrees that during the life of this license it will diligently and continuously manufacture, sell and market.....apparatus under this license and will exert its best efforts to create a demand therefor, and to increase and extend its business and to supply the demand for its vacuum cleaning output.

7. In the event that the Licensee, or its successors to its whole.....business discontinues the said business, this license shall cease and terminate at the option of the Licensor.

8. The Licensee hereby covenants and agrees that it will mark all.....apparatus made, sold, leased, or put into use by it with the word "Patented" and the date....., and with the dates of such other patents under which this license is granted as are lawfully applicable to the said apparatus or appurtenance.

9. IT IS AGREED that the license hereby granted to the Licensee is to continue during the remainder of the term of patent No.....as above set forth, but in the event that said patent.....shall be declared invalid by the final judgment of a court of last resort the license in respect to all of the other patents and applications above enumerated and the payments of royalties under said patent....., and under said other patents and applications shall thereafter cease and determine. Payment of the royalty herein stipulated to be paid shall cease if within five years from the date hereof the said patent....., shall not have been finally adjudicated and held to be valid in a case in which the validity of said patent is contested, unless the validity of the said patent shall be general public acquiescence become so well established as to enable preliminary injunctions to be procured under said

patent. The question whether the validity of the said patent is generally acquiesced in shall be first tested by a motion for a preliminary injunction in a contested case to enforce said patent, or in the event that this is not feasible, the question is to be settled by arbitration in the usual manner, that is to say, by the selection of one arbitrator by the Licensor, and the selection of another arbitrator by the Licensee, and in case of disagreement of these two arbitrators by the selection of a third arbitrator by the two arbitrators first so selected, the judgment of the arbitrators or majority of them to be final; provided, however, that if the payment of royalties shall cease as above set forth, the royalty payments as to the future output of the said Licensee shall be resumed and royalties shall be paid after such resumption of payment according to the plan of this license immediately upon the said patent No. , being adjudged valid at final hearing, or in case the validity of said patent shall be sustained or found by arbitration, because of general public acquiescence, as above set forth, but no royalties shall be required to be paid for the period between the time of such cessation of payments and the time for resumption of payments above noted.

10. The party of the first part agrees to exercise reasonable diligence to establish by suit at law or in equity the validity of its said patent , and to secure to the party of the second part protection against infringement of said patent as to machines of the class respecting which the party of the second part is hereby licensed.

11. IT IS AGREED that the Licensor, its successors and assigns, shall not engage in the manufacture and sale of apparatus under said patents or any of them in competition with the Licensee, but this clause shall not be interpreted as precluding the party of the first part, its successors or assigns, from engaging in the manufacture and sale of such apparatus as is excluded or reserved by this license agreement.

12. The Licensee hereby agrees not to dispute the validity of the said Letters Patent No. , or the title of the party of the first part thereto, during the continuance of this license nor to aid others in doing so.

13. IT IS AGREED that this is a license to manufacture apparatus and appurtenances thereto, and is not to be interpreted as granting to the Licensee the right to manufacture appurtenances or parts of apparatus to be used with any unlicensed plant or apparatus.

14. Upon failure of the Licensee to perform any or all of the conditions of this agreement, after one month's written notice from the Licensor of its failure so to do in any particular, the Licensor may, at its option, by notice in writing, cancel this license without prejudice to its right to recover thereunder any royalties that may have accrued at the time of cancellation, or any damage that may have been suffered.

15. This license is not assignable by the Licensor, in whole or in part, excepting to a successor to its whole business.

16. Conditioned upon the continuance of this license in force and the full and prompt payment of royalties herein agreed to be paid, the Licensor waives all claims heretofore arising against the Licensee, its predecessors in business, and all users of apparatus installed by or purchased from the Licensee, or its agents, or its predecessors in business, or their agents, arising out of the infringement of any of the aforesaid Letters Patent prior to the date of this agreement.

17. The Licensor hereby stipulates that it has good title to the aforesaid patents and the right to grant the license hereby granted to the Licensee.

18. IT IS AGREED by and between the parties hereto that this contract shall be interpreted according to the laws of the State of

19. This license agreement is binding upon the parties hereto, their legal representatives, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their seals, and caused these presents to be signed by their duly authorized officers, on the day and year first above written.

Patents—License Agreement to Manufacture and Sell Commodity—Another Form—Provisions for Arbitration, Rebates, Accounting—Special Provisions for Limited Territory

AGREEMENT made.....between the.....
, hereinafter described as the Licensor,
 and....., hereinafter described as the Licensee,

WHEREAS, the Licensor is the sole owner of United States Letters Patent No....., granted....., and other United States Letters Patent and Applications for patents, as shown on the schedule hereto annexed and marked "Schedule of Patents and Applications for Patents," and

WHEREAS, the purpose of this agreement is to secure to the Licensee the right to use said patents and inventions subject to the terms of this agreement and to secure to the Licensor the payment of a license, fee or royalty for the privilege herein granted sufficiently large to warrant giving to the Licensee rights for the manufacture and sale throughout the United States of the.....hereinafter described,

NOW, THEREFORE, in consideration of the premises and of the covenants herein contained, the parties hereto agree as follows:

1. The Licensee acknowledges the validity of United States Letters Patent No....., granted....., known as the.....and the Licensor's title thereto, and agrees not to contest the validity of the same unless this agreement is terminated as herein provided.

2. The Licensor hereby grants a non-exclusive license to the Licensee from and after the date hereof and during the term of said patent No.....and subject to the conditions hereof under the aforesaid Letters Patent and pending applications throughout the territory covered thereby in the United States, to use the inventions described and claimed therein in the manufacture, use and sale of.....

3. The Licensee agrees not to manufacture or sell any....., embodying the inventions described

and claimed in said Letters Patent and pending applications.

4. The Licensee agrees to pay to the Licensor, or its successors or assigns, a license fee or royalty upon each and everymade, sold, leased or put into use by it under this license (except such as are used directly by the Licensee, for demonstration purposes) within a period ofyears from and after....., the sum ofper cent of the net bona fide wholesale selling price thereof on sales made by the Licensee at wholesale, andper cent of the actual bona fide net selling price thereof on sales made by the Licensee at retail direct to purchasers. The said.....are to include only the following equipment, namely,.....

5. All royalties hereunder shall be paid quarter-annually within thirty days after the end of each quarterly period, the first quarter to begin with the.....day of....., and to end on the.....day of.....; and the Licensee agrees to render statements duly verified by its proper officer, at each of the times stated for payment, showing all.....or other articles above enumerated or included which the Licensee has made, sold, leased or put into use (except as are used directly by the Licensee for demonstration purposes) within the quarter which the statement covers, and to keep full, accurate and complete books of account respecting the said business, and to give the Licensor, or its duly authorized representatives, the privilege of inspecting or examining said books of the Licensee at all reasonable times for the purpose of verifying said quarterly statements and determining the correctness of the said quarterly payments.

6. It is agreed that the license hereby granted to the Licensee is to continue during the remainder of the term of the patent, No....., as above set forth, but in the event that said patent, No.....shall be declared invalid by the final judgment of a Court of last resort, the license, in respect to all of the other patents and applications, as shown on the schedule

hereto annexed and marked "Schedule of Patents and Applications for Patents," and the payments of royalties under said patent No....., and under said other patents and applications, shall thereafter cease and terminate. Payment of the royalties stipulated to be paid herein for..... shall cease if within.....years from the date hereof the said patent, No.....shall not have been finally adjudicated and held to be valid in a case in which the validity of said patent is contested, unless the validity of said patent shall, by general public acquiescence, become so well established as to enable preliminary injunctions to be procured under said patent. The question whether the validity of said patent is generally acquiesced in shall be first tested by motion for a preliminary injunction in a contested case to enforce said patent, or in the event that this is not feasible, the question is to be settled by arbitration in the usual manner, that is to say, by the selection of one arbitrator by the Licensor and the selection of another arbitrator by the Licensee, and in case of disagreement by these two arbitrators, by the selection of a third arbitrator by the two arbitrators first so selected, the judgment of the arbitrators or a majority of them shall be final; provided, however, that if the payment of royalty shall cease, as above set forth, the royalty payments as to the future output of the.....covered hereby, of the said Licensee, shall be resumed and royalties shall be paid after such resumption of payment according to the plan of this license immediately upon the said patent No.....being adjudged valid at final hearing, or in case the validity of said patent shall be sustained by arbitration because of general public acquiescence, as above set forth; but no royalties shall be required to be paid for the period between the time of such cessation of payments and time of resumption of payments above noted.

7. If in any year, beginning....., the royalties from....., actually received by the Licensor from its several licensees referred to in....., shall exceed the sum of \$..... cash, the said royalties for any such year shall be rebated so that above the said sum of \$.....the Licensor shall

receive royalties annually on machines at the rate of per cent during that year and proper allowance shall be made therefor in the accounting for the first quarter in the ensuing year; and the Licensor agrees that it will keep full, accurate and complete books of account showing receipts of royalties from its said licensees and the date of payment thereof, which books shall be open to the inspection of the duly authorized representatives of the Licensee at all times; and that beginning, it will render to the Licensee annually a verified statement of the total royalties actually received under said licenses herein enumerated or provided for.

8. In the event that the Licensee, failing to render statements and make quarter annual payment of royalties, as aforesaid, or any or all of them within thirty days after due date, then the Licensor may at any time thereafter, on notice, cancel this agreement without loss of right to recovery of any sum due it from the Licensee prior to cancellation, and upon giving such notice shall become immediately entitled to all payments over due as aforesaid, but it is agreed that such notice of cancellation is understood to be a notice of not less than days, given in writing, during which period the Licensee shall have the right to make good its default by rendering the statement and making the payment required of it.

9. The Licensor represents that the rates of royalties fixed herein are as low as those paid by other licensees and it agrees to give to the Licensee the benefit of any reduction in the rate of royalties and at equal terms to those which may hereafter be given to other licensees for covered or contemplated herein and as specified in paragraph 2 hereof.

10. The Licensor agrees to notify infringers of its patent to whom its attention may be called from time to time by the Licensee of such infringement, and upon notice and request, to assume the defense and pay the expenses of defending all suits and litigations that may be instituted against the Licensee and its agents or customers because of the manufacture, use or sale of manufactured by the Licensee under this agreement and disclosed in the patents under which it is hereby licensed, and it further agrees to use all reasonable efforts to establish the validity of its patent

No....., and to secure to the..... protection of the use of the inventions covered herein for machines of the class which the said Licensee is hereby licensed to manufacture and sell, but nothing herein contained shall be so construed as to render the Licensor liable with respect to any litigation between its various licensees.

11. The Licensee agrees to mark all apparatus made or sold by it under this license with the words "patented.....," and, if so requested to do by the Licensor, with the date or dates of any other patent or patents under which this license is granted.

12. The Licensee agrees not to subject or assign all or any portion of this agreement without the written consent of the Licensor.

13. It is agreed that the State of.....is controlled by the.....a corporation of the State of....., and that therefore the State of..... is included within the territory covered by this license upon and only upon the terms and conditions set forth in this paragraph, all of which the Licensee agrees to keep and perform and for failure to so keep and perform the State of.....shall, at the option of the Licensor, such option to be notified to the Licensee at any time after such failure, be excluded from this license with like effect as if it never had been included herein, and in the event of such failure the Licensee agrees not to exercise within the State of..... any of the rights hereby granted under the penalty of full damages suffered by the Licensor for so doing.

The Terms under which the State of.....is included herein are as follows:

The Licensee agrees to keep correct and full books of account, showing the business done in the State of.....and to render to the Licensor within thirty days after the end of each quarter-annual period, the first quarterly period to end....., complete and correct sworn statements of the business done by it under this license in the State of....., and further agrees to permit the..... Company, or its officers or agents, to examine its books at all reasonable times in order to determine the truth

and completeness of said statements in so far as they apply to the business done hereunder in the State of.....

14. The Licensee hereby covenants that during the life of this agreement it will diligently and continuously manufacture, sell and market the..... machines which are the subject matter of this agreement and will use and exert its best powers to create a demand therefor and to increase and extend the business therein and the supply therefor.

15. This agreement shall bind the parties hereto and their successors and assigns.

IN WITNESS WHEREOF the parties hereto have hereunto caused its respective corporate names to be subscribed and its respective seals to be affixed the day and year first above written.

Patent License to Manufacturer

AGREEMENT made.....between..... hereinafter called PATENTEE, and.....hereinafter called MANUFACTURER, WITNESSETH:

WHEREAS, the PATENTEE is the sole and exclusive owner of certain letters patent of the United States, issued..... under the serial number..... covering..... and certain other foreign letters patent as follows:.....

WHEREAS, the parties desire to agree on the terms, for the manufacture and sale of articles under said patent,

NOW, IN CONSIDERATION of the premises and covenants herein contained, the parties agree:

1. Wherever the word "patent" is used in this agreement, it shall be construed to mean the letters patent specifically mentioned herein, any and all extensions, renewals and reissues thereof and any and all patents issued to or acquired by the PATENTEE for improvements or developments relating to said patents.

2. The PATENTEE hereby warrants and represents to the MANUFACTURER; that he is the sole and exclusive owner of the said letters patent, free and clear of any and all liens, charges, debts or encumbrances.

3. The PATENTEE hereby grants to the MANUFACTURER,

his executors, administrators and assigns, during the residue of the term by said letters patent granted and unexpired, and also during all future term or terms which may hereafter be granted by way of any new patent or any reissue or renewal of the present patents, the sole and exclusive right, to manufacture, use and sell, throughout the world, and all other articles made under the said patents, to designate the articles by any name which the MANUFACTURER may select, and to receive for his own use, all profits and advantages which shall or can be made by the manufacture, use and sale of said patented articles.

4. The PATENTEE for himself, his executors, administrators and assigns, hereby covenants with the MANUFACTURER, his executors, administrators and assigns, that the PATENTEE, his executors, administrators and assigns, will not at any time during the residue of the term of said patent or any future term, grant any license to any other person, firm or corporation, directly or indirectly, to manufacture or sell the articles under said patents or otherwise encumber said patents.

5. If any suit should be instituted against any of the parties hereto or their customers or agents or servants for the purpose of interfering with or preventing or recovering damages for the manufacture or sale of the patented article under any of said patents, the MANUFACTURER shall have the sole right and the PATENTEE hereby grants to the MANUFACTURER such sole right, to defend the same or to control and conduct the defense thereof. If the MANUFACTURER deems it advisable that any suit be instituted for the maintenance, protection or vindication of the patents, or to prevent infringements thereof, the PATENTEE will permit the MANUFACTURER at his option to have the sole control of the prosecution or defense thereof and the PATENTEE agrees to institute in his own name, any such suit when the MANUFACTURER deems it necessary. The PATENTEE agrees to execute all papers which MANUFACTURER requests time to execute to prosecute or defend any suit. The cost of any such suit or of any such defense, including payments for legal services and necessary disbursements and payments of damages or profits awarded by way of adjustment or settlement shall be paid by the PATENTEE.

6. The MANUFACTURER shall not be liable to the PATENTEE for damages for the result of any such litigation unless such damages result by reason of the fraud of the MANUFACTURER. The PATENTEE agrees to furnish the MANUFACTURER with all evidence necessary for the prosecution or defense of any such litigation without charge to the MANUFACTURER.

7. If the MANUFACTURER shall by reason of the order, judgment or decision of any Court be deprived of the right to manufacture or sell the patented article in said patents, or be restrained from so manufacturing or selling, the MANUFACTURER shall be relieved and discharged of any and all liability to the PATENTEE.

8. As full compensation for the rights hereby granted by the PATENTEE to the MANUFACTURER, the PATENTEE agrees to accept, and the MANUFACTURER agrees to pay the PATENTEE, ten per cent (10%) on the gross receipts of the MANUFACTURER from the sales of the patented article, up to the sale of ten thousand (10,000)..... nine per cent (9%) on the gross receipts of the MANUFACTURER ofabove ten thousand (10,000) and up to twenty thousand (20,000), and eight per cent (8%) on the gross receipts of the MANUFACTURER of sales of.....above twenty thousand (20,000).

9. The MANUFACTURER agrees at all times to keep accurate accounts of their sales and receipts, to render statements thereof in writing to the PATENTEE..... Such statements shall be rendered during the months of..... and shall be accompanied by a remittance to the PATENTEE of the amounts thereon found due to them. The PATENTEE shall at all reasonable times within..... days after the rendition of any such accounts, be permitted to examine the MANUFACTURER'S books in person or by duly authorized representative for the purpose of verifying such statements of accounts.

10. It is agreed that the MANUFACTURER may with the written consent and approval of the PATENTEE, sell all the rights of the PATENTEE in and to the patents and the MANUFACTURER'S rights under this agreement and the proceeds of the sale, after payment to the MANUFACTURER of the amount of capital invested by them, shall be divided, fifty (50%) per cent

to the MANUFACTURER and fifty (50%) per cent to the PATENTEE.

11. This agreement shall enure to the benefit of and shall obligate the parties hereto, their heirs, executors, administrators and assigns. The PATENTEE agrees that the MANUFACTURER shall have the right to assign this agreement to a corporation to be organized with a minimum authorized capital stock of, and upon such assignment the MANUFACTURER shall be released from any and all liability under this contract from the date of said assignment, providing that said corporation assumes any and all liabilities under this contract from the date of said assignment, and gives notice of assignment to the PATENTEE.

12. The MANUFACTURER agrees to use his best efforts to manufacture and sell the said patented articles.

13. The MANUFACTURER agrees that if he organize and control a corporation to act as selling agent for the patented article, that the MANUFACTURER will pay to the PATENTEE royalties on the gross receipts of the selling company from the sale of the patented article.

14. Notice to the parties under this agreement shall, until further notice, be given at the following addresses:

Name:	Address:
.....
.....
.....
.....

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals.

In presence of:	(L. S.)
	(L. S.)

License to Use Patented Invention—Contract of Employment of Inventor—Royalties, Profits, Compensation—Limited Arbitration—Separate Accounting System

AGREEMENT made this day of, between, hereinafter described as "The

Inventor," and....., hereinafter described as "The Company" WITNESSETH:

WHEREAS, The Inventor represents that he has invented certain improvements upon....., which improvements are known under the name of the and

WHEREAS, the Inventor represents that he has exclusive license for the use and manufacture of said..... for which invention, constituting such improvements, he has executed an application for letters patent of the United States, which application was filed on....., and

WHEREAS, The Company desires to manufacture the said

IN CONSIDERATION of the mutual covenants herein contained, it is agreed between the parties hereto as follows:

1. Wherever the words "The Company" appear in this agreement they shall refer to, and be construed to refer to, The Company, its successors and assigns. Wherever the expression "the department" is used, it shall refer to that portion of The Company's business devoted to the manufacture and sale of the.....

2. The Inventor hereby grants to The Company, the exclusive license and right to manufacture the said..... for a term beginning with the date of this agreement and ending with the expiration of the patent to be obtained thereon. The Inventor warrants that he has the sole right and exclusive privilege of manufacturing, selling, operating and exploiting the said.....and agrees to permit The Company in its own name or in the Inventor's name, as it may deem proper, to prosecute such suits, actions or other proceedings as may be necessary for the protection and vindication of said rights to said.....under the letters patent to be obtained. The Inventor further agrees to hold The Company harmless from all claims of whatsoever nature, made against it, whether justified or unjustified, for the infringement or violation of the rights of anyone else of any kind or nature, through the manufacture, sale or exploitation of said.....under the patent applied for, separately, or in connection with, or as a part of..... In the event that the patent applied for on the.....should not be granted, or in the

event that by a decree of competent authority the patent, if granted, is subsequently invalidated, then The Company shall have the option to terminate this contract forthwith, but it is agreed that that option rests entirely with The Company and may or may not be exercised by it, as it sees fit, the Inventor, nevertheless, to remain liable under the terms of this agreement with respect to all matters done, omitted or performed prior to said termination, and The Company to have the same rights and privileges as are granted it in the contingency described in paragraphs "12" and "14."

3. The Inventor is to render The Company his exclusive services in the manufacture and production of said, and agrees not to render any services to any other person, individual or corporation during the term of this agreement, and to use his best efforts in the performance of his duties hereunder. The Inventor agrees not to engage in or attend to the repair, manufacture or exploitation in any form or manner of the or anything connected therewith, or with of any character, at his home.

4. The Inventor agrees that any improvements, further inventions or discoveries which he may come upon, make, invent or discover or otherwise acquire with reference to or with reference to the shall become subject to the terms of this agreement in the same manner as the, and hereby agrees to and grants and assigns to The Company, all such licenses and rights with respect to such new discoveries and inventions as are hereby granted and assigned with respect to the The Inventor agrees to apply for patents upon such new improvements, discoveries and inventions and to assign such applications and the patents issued thereon to The Company as soon as legally possible, provided, however, that the Inventor may require The Company to pay the expenses of making and prosecuting such applications, and may refuse to proceed therewith unless he be indemnified against such expenses.

5. The Inventor agrees to keep itemized records with respect to all the processes of manufacture of the said, said records to be the property of The Company, and to attend to and prepare detailed calculations affording a close and

accurate indication and survey of the cost of production of said..... In the performance of his duties hereunder, the Inventor agrees to submit to all the rules and regulations of The Company, including whatever rules and regulations are or will be promulgated for the manufacturing departments.

6. The Company agrees to pay the Inventor a salary of \$.....per week for the term of this agreement or until the other termination thereof, pursuant to its terms.

7. In addition to the salary of \$..... per week, The Company agrees to pay the Inventor a royalty of% of the net sales receipts of each....., or parts thereof, that are sold, payment of such compensation to be made aftermonths have expired since the receipt of payment for sold..... Net receipts, for the purposes of this agreement, shall be calculated as follows:—By deducting from the gross sales price of all.....sold by The Company and collected and received by it, the sum of the following amounts:—trade discounts allowed, commissions paid, and the sale price of merchandise returned.

8. The Company further agrees to pay to the Inventor a percentage of profits, viz.:% of the net profits per annum derived from the proceeds of the net sales of the said.....,, payment of said profits to be made as soon as practicable after the balance sheet of the fiscal year has been completed. Net profits shall be construed, for the purposes of this agreement, to be the difference between the net sales receipts, as above defined, and the sum of the following items:—All other expenses, including advertising, allocable to the department, and a fair allocation of overhead, which shall be calculated in proportion to the gross receipts of The Company's business, and the gross receipts of the department.

9. The Company agrees to produce and manufacture the said.....in such quantities as are consistent with the demand for the same and facilities for manufacture.

10. The Company agrees to advertise the.....and to use all reasonable means to advertise and popularize the apparatus.

11. The Company agrees to create and maintain a special system of accounting for the manufacture of the said.....

....., so that it will afford in separate and detailed manner a record of all those transactions, showing and indicating a clear survey and estimate of the profits of the department.

12. In the event that the Inventor fails to comply with any of the terms of this agreement, The Company shall have the right to withhold such funds as may be accumulated for payment to the Inventor until the violations on the part of the Inventor shall have been corrected and shall have ceased. If the Inventor should fail to render services to The Company, or manufacture or negotiate the manufacture of a similar.....
.....for himself or for other parties, directly or indirectly The Company shall have the right to terminate this agreement immediately without forfeiting its right to manufacture under the said license herein granted, and to withhold from the Inventor payment of the amounts accumulated in favor of the Inventor on account of The Company's damages, it being agreed between the parties that in view of the complicated nature of the requirements for manufacture and sale of the said....., and of the importance to The Company of the personal services of the Inventor, it is impossible to estimate the exact amount of damages which will be sustained by The Company in the event of the Inventor's failure to abide by this agreement: and that the liquidated sums above referred to will represent the minimum amount of damages accruing to The Company. It is expressly understood, however, that whatever sums may be retained as liquidated damages shall not be in substitution for such damages in excess of said liquidated sums which The Company may sustain and which it may be able to demonstrate, nor shall it be in substitution for such other rights, equitable or legal, which The Company shall have, but The Company may proceed and employ the same to the same extent and in the same manner as if this provision for liquidated damages had not been made.

13. The Company shall have the right to terminate this agreement at any time if the demand for the..... shall become so reduced as not to warrant further manufacture from the business point of view, whether said reduction of

sales is due to inventions or improvements of other parties or to any other influences of any kind whatsoever.

14. If The Company should fail to comply with any of the terms of this agreement on its part to be performed, other than those affecting payment of compensation, royalties and profits, and shall continue such violation for a period of days after written notice specifying the nature and character of such violations, from the Inventor, then and in that event the Inventor may, at his option, terminate this agreement by giving written notice of his intention to terminate the contract to The Company. The contract shall continue after receipt of such notice for months and shall expire and come to an end at and upon the expiration of said months. Regardless of the expiration of said agreement, however, The Company shall have the right to complete the manufacture of under construction at the date of said expiration, and to manufacture additional so as to enable it to make use of any parts on hand at the date of such expiration, and The Company shall also have the right to sell all on hand at said expiration, and all manufactured pursuant to this clause.

15. It is agreed that any dispute between the parties with reference to the amount of compensation, royalty or profits to be paid to the Inventor shall be referred for arbitration to a certified public accountant, mutually selected by the parties, or in the event that they are unable to agree within days after request by one party to the other for selection of such arbitrators, to a certified public accountant appointed by the President of the Chamber of Commerce of the City of or, if he will not act, to an arbitrator appointed by the Supreme Court of the State of New York, pursuant to the provisions of the Arbitration Law of the State of New York then in force. The expenses of such arbitration shall be borne equally between the parties.

16. In the event that the Inventor should die, such royalties, profits and compensation as may have been earned and unpaid up to the date of his decease, shall be paid to his estate, and all royalties accrued thereafter shall be paid to his estate, but compensation and profits of the department earned thereafter

by The Company shall cease, The Company having the right, nevertheless, to use the license hereby granted in the same manner as if the Inventor had not died.

17. All notices provided for herein shall be sent by registered mail if directed to The Company at.....and if directed to the Inventor at.....

18. This writing contains the whole agreement of the parties. There are no representations, promises or covenants other than contained herein. No waiver or modification thereof shall be valid unless in writing, executed with the same formality as this instrument. No waiver of any breach of this contract shall be deemed a waiver of a subsequent breach of like or similar nature.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals the day and year first above written.

Contract of Exclusive Agency for Sale of Merchandise

Williston—Secs. 90, 279, 280, 653, 1406, 1446, 1645, 1700n.

AGREEMENT made....., between..... hereinafter referred to as the "Principal, and..... hereinafter referred to as "Agent," WITNESSETH:

WHEREAS, the Principal is engaged in the business of..... and

WHEREAS, the Agent has been engaged in business as a purchaser and dealer in..... in

Now, in consideration of the premises and of the mutual covenants herein set forth, the parties hereto agree as follows:

1. The Principal, hereby engages the Agent as its sole sales agent in the territory hereinafter specified, during the term of this agreement, and the Agent hereby accepts such employment and agrees to devote his entire time and energies to the business of the Principal to act as its Agent in....., and to perform such other duties as may be required of him by the Principal, and the Agent agrees that during the term of this agreement he will not directly or indirectly be interested in or engaged in any form or branch of the.....business, except as agent for the Principal.

2. The term of this agreement is years, from

3. The territory covered by the Agent's agency is
The territory described in this clause is hereinafter referred to as
"aforesaid territory."

4. The Agent agrees to transfer to the Principal, the office
now maintained by him under the name of ,
and all furniture and fixtures therein at cost, and the Principal
agrees to establish in such premises an office under his own
name.

5. The Principal agrees to establish , and
the Agent agrees to supervise the same for the Principal.

6. The parties agree that a person or persons mutually
agreeable shall be selected as assistants to the Agent in the sale
of the Principal's products.

7. The Agent agrees to use his best efforts to
for the Principal, and all orders so procured shall be subject to
acceptance by the Principal at its office.

8. The Principal agrees to bill merchandise ordered through
the Agent to the office at cost.

9. In full compensation for the Agent's services under this
agreement, the Principal agrees to pay, and the Agent agrees to
accept of the net profits of the operation of the
. agency of the Principal, to be calculated as
follows:

10. Net profits shall be the difference between gross receipts
and expenditures, as hereinafter defined.

11. Gross receipts shall include:

(a) All moneys received by the Principal from sales made
through the Agent to customers in the aforesaid territory.

(b) All moneys received by the Principal from sales made
by the Principal to customers in the aforesaid territory without
intervention of the Agent.

12. In "expenses" shall be included:

(c) The cost to the Principal of all merchandise sold by
the Agent to customers in the aforesaid territory, including in
such cost all charges paid or incurred by the Principal in con-
nection with such merchandise, and all expenses of the Princi-
pal in maintaining the office, including rental,
insurance, clerk hire, transportation charges and all other actual

outlays in connection with the business contemplated by this agreement, and any and all losses not compensated by insurance incurred in the conduct of such business.

13. Accurate records and accounts shall be kept by the Principal and by the Agent of all transactions under this agreement, and each party's records and accounts shall be open to inspection by the other party at reasonable times, and statements of the net profits shall be prepared. and shall be submitted by the Principal to the Agent within

In the event of any dispute as to the correctness of any statement of account, such dispute shall be submitted for arbitration to a certified public accountant to be selected as follows: The party questioning the correctness of an account shall submit to the other party for the selection of an arbitrator, a list of names of three certified public accountants with offices in If within days after the submission of such list the other party shall not have accepted one of the persons so named as the arbitrator to whom the differences shall be submitted, then such differences shall be settled by an arbitrator who shall be a certified public accountant, with an office in named on the application of either party upon written notice to the other, by the, or, if he refuse, upon demand, to name an arbitrator, by the, or, if he, upon demand, refuse to name an arbitrator, by application upon notice to the Court. The expenses of the arbitration shall be borne by the parties in such proportion as the arbitrator shall, in his decision, order. The parties agree in all respects to accept and fulfill the decision of the arbitrator.

14. Upon the acceptance of any account or the adjustment of any disputed account, the Principal shall pay the Agent the amount found due to him thereon.

15. As the Principal intends to maintain a large supply of goods on hand in, the Agent agrees to furnish to the Principal a Bond of, or of some other surety company satisfactory to the, Principal in form satisfactory to the Principal, in the sum of, insuring the Principal against any loss of money or property by reason of any act of the Agent.

16. Notices to be given hereunder by either party to the other shall be given to the Principal at..... and to the Agent at..... Either party may change the place to which notice may be sent by written notice to the other.

17. This instrument contains the entire agreement between the parties and no terms have been agreed upon or understood between the parties except as herein set forth.

Contract for Exploitation of Secret Process

Williston—1643 and 1646;

Grant *v.* Pratt, 52 App. Div. 540, 65 N. Y. Supp. 486, 87 App. Div. 490, 86 N. Y. Supp. 983, 110 App. Div. 149, 97 N. Y. Supp. 38, 110 App. Div. 867, 97 N. Y. Supp. 29. Aff'd without opinion 186 N. Y. 611. See also 47 L. R. A. (N. S.), 413.

AGREEMENT, made.....between.....herein-after referred to as the "Manufacturer," and.....herein-after referred to as the "Owner."

WHEREAS, the Owner has the exclusive knowledge, possession and ownership of certain inventions, formulæ, secrets and processes which he has made use of in.....samples of certain of which.....made by the use of said inventions, formulæ, secrets and processes have been submitted to the Manufacturer, and tested by it.

THIS AGREEMENT WITNESSETH, that the parties hereto in consideration of the premises, of the mutual covenants herein contained do hereby mutually covenant and agree as follows:

1. The Owner will forthwith fully and completely instruct and advise any and all employees of said party of the Manufacturer as by it may be designated, in such inventions, secrets, formulæ and processes, and in the practical application and use thereof; and will hereafter, at any time and at all times, consistent and convenient with his other business, continue and renew such instructions of such person as may, from time to time, be designated, and fully advise and instruct said Manufacturer, and its employees as designated, both in the said inventions, formulæ, secrets and processes aforesaid, and in those which

he may hereafter devise or which may hereafter become known to him relating to the manufacture, manipulation and preparation of and kindred products; and in the use and practical application thereof; and will, from time to time, hereafter devote to the completion and improvement of such and kindred products, such further time and attention as may be necessary, and at his convenience and as he may find it consistent and convenient with his other business so to devote. The Owner covenants and warrants that at no time heretofore has he imparted to any one any of the said processes, secrets, formulæ or inventions, or in any manner suffered or allowed any person to become acquainted therewith, and that no person now has any knowledge obtained of or through him in regard thereto, and that he will at all times hereafter preserve the secrecy of the same so that neither by his intention, sufferance, negligence or in any manner whatever, shall any person become acquainted therewith or with any portion thereof.

2. In consideration therefor the manufacturer will pay to the Owner moneys and royalties not exceeding in all to be computed as follows: For all sales of goods manufactured by use of the said processes, formulæ, secrets and inventions, there shall be paid to the Owner a royalty which on all goods listed on the price list of the party of the first part at or over, shall be, and on all goods listed on such price list at less than, shall be until the whole amount paid to the Owner for and on account of said royalties shall aggregate

3. In all cases of the sale of mixtures, wherein any goods made by use of said inventions, etc., are included, the royalties shall be calculated on the basis of the amount and value of the ingredients entering into such mixtures.

The manufacturer covenants with and guarantees to the Owner that at least dollars per annum in any event shall be paid upon the said royalties for the first years after the date of this agreement, and that the same shall be paid by the manufacturer as follows: on the execution and delivery of these presents and of said full and complete statement of said processes, inventions, secrets

and formulæ; which sum of shall be charged against such royalty at the rate of for each of said years; and also shall pay per annum, in sums of at the end of each during said years. Such payments so guaranteed shall be on account of the maximum sum of hereinbefore mentioned.

4. The Manufacturer will also, so soon as and whenever the total amount of royalties credited to the Owner shall exceed the aggregate of all payments so charged against him as aforesaid, pay him each such excess as the same may from time to time exist, to the end that the minimum payment received by said Owner on account of said royalties shall be said cash payment of, charged as aforesaid, and said sum of per for years, and that the maximum shall be the total amount of royalties credited, from time to time, until the same are the said sum of Such royalties are to be credited to said Owner on the books of the Manufacturer on or before, and shall be paid on The Manufacturer is not to pay any royalties to the Owner upon the goods which are given away as samples to solicit trade, nor upon goods returned for any cause, but only upon goods sold, delivered and finally accepted and retained.

5. In case at the end of, the royalties credited to the Owner do not equal the payments made to him up to that time, there shall thereafter be no further payments made to said Owner, except for such balance of royalties in excess of all payments made, as may thereafter accrue, from time to time, in his favor, which said payments are to continue until the said Owner has received the full sum first above mentioned of and whatever said sum of shall be fully paid, all said inventions, formulæ, secrets and processes, both those originally communicated upon the execution of this agreement and those thereafter discovered shall be the full and sole property of the Manufacturer free from any obligation, claim or royalty. In any event, unless the option provided for in paragraph fourth be exercised, this contract shall not terminate, nor the manufacturer cease to manufacture

and sell said goods, nor cease to pay said royalties, until the full royalties of shall have been paid to the Owner.

6. The Manufacturer agrees immediately to enter upon and by all reasonable endeavors to push the manufacture and sale of all grades of said goods, and at all times to actively continue such manufacture and sale to any and all extent that the market will warrant, until the said royalties of shall have been so paid. The Manufacturer agrees, also, to push the sale of the higher priced goods, made under such processes, etc., with the same efforts which it shall use for the lower priced goods made under such processes.

7. The Manufacturer agrees to keep full account of all its transactions relative to the said goods and to render statements to the Owner whenever desired, not exceeding as aforesaid, and that for the purpose of verifying said statements he may, not oftener than, examine its books and vouchers in relation to the said transactions, or require the said statements to be verified by the oath of one of the officers of the Manufacturer.

8. The Manufacturer may at its option at any time within from the date of this agreement, which option should be exercised by the giving of written notice thereof to the Owner, purchase from the Owner all his rights in and under this agreement, all said processes, inventions, secrets and formulæ, as the same shall exist at the time of said purchase, and the factory and property of said Owner in, consisting of, both real and personal, used upon or about the said premises in the manufacture of in consideration and upon the payment of, which sum shall be paid as follows: It is, however, provided that, for the purpose of said purchase, said factory, real estate and plant are valued at, and that the Owner may at any time, prior to the exercise of said option by the party of the first part, or notice thereof, sell, lease or otherwise dispose of the same, and thereupon the price to be paid under said option shall be, being the value of all other considerations in said option included. In case of loss or damage by fire or otherwise to said factory, property and plant, said Owner shall restore the same at his

expense and said option shall not be affected. If this option is exercised, this contract shall thereupon terminate, except as to the obligation of the Owner to preserve the secrecy of said inventions, formulas, secrets and processes.

9. Owing to the fact that the Owner, by the act of disclosing his aforesaid inventions, processes and formulæ, thereby loses control of his property therein, it is therefore covenanted and agreed by the Manufacturer, that in case the Owner shall become insolvent, or shall fail in any way to keep and perform all the terms of this agreement, on its part to be kept and performed, there shall forthwith become and be due and payable, as liquidated damages to the Manufacturer, and not as penalty, the sum, if the same shall become due within . . . years after the date thereof, of . . . , and if the same shall become due after the term of . . . years the sum of . . . , at which respective sums said damages are hereby appraised, assessed and fixed, but at any and every time such liquidated damages shall be reduced by crediting thereon all the payments theretofore made, as provided by paragraph "4" hereof.

10. The Owner will not, at any time hereafter so long as this agreement shall continue or after the same has been fulfilled, engage in any manner, by use of his name or influence, in or about the manufacture of . . . or like products, which might in any manner compete with the business of the Manufacturer, or reduce the value of the processes, inventions, secrets and formulas which are the subject of this agreement.

11. For the purpose of securing the secrecy of said inventions, the Owner will place in a sealed envelope all manuscripts, memoranda and information now or hereafter in his possession, relative to the said inventions, etc., which said envelope shall be placed in the hands of a trustee to be selected and shall be delivered up or opened only on the consent of both parties thereon.

12. To the end that the secrecy of all such processes, inventions, secrets and formulæ may be preserved it is especially covenanted and agreed that any dispute between the parties hereto shall be referred to and decided by three arbitrators who shall be suitable, disinterested and competent; one arbitrator being appointed by the said Manufacturer, one arbitrator by the

Owner, and the third arbitrator by joint and mutual agreement of the parties hereto, or in case of their failure to agree upon such remaining arbitrator, then of the two first appointed, and no suit, action or legal proceeding of any nature shall be brought by either party except to enforce a decision of such arbitrators or to compel their appointment.

13. During the continuance of this agreement the Manufacturer shall not impart knowledge of the aforesaid processes, inventions, secrets and formulas to any other other than its own employees, nor at any time transfer or assign this contract except upon the written consent of the Owner, which consent the Owner agrees to give to a transfer or assignment to any responsible person or corporation, and in no event to demand a money consideration therefor.

14. This agreement shall extend to and bind the successors, executors, administrators and assigns of the parties.

Contract for Purchase of Secret Process

Williston—Sections 1643 and 1646

See:

Grant *v.* Pratt, 52 App. Div. 540, 65 N. Y. Supp. 486, 87 App. Div. 490, 84 N. Y. Supp. 983, 110 App. Div. 149, 97 N. Y. Supp. 38, 110 App. Div. 867, 97 N. Y. Supp. 29, aff'd without opinion, 186 N. Y. 611, 47 L. R. A. (N. S.) 413.

AGREEMENT made.....between....., hereinafter referred to as the Seller, and....., hereinafter referred to as the Purchaser, in consideration of the mutual covenants herein contained, WITNESSETH:

1. The Seller represents that he has invented and discovered a secret process for..... The said process is hereinafter referred to as the secret process. The Seller further represents and warrants that he has not at any time divulged or imparted the said secret process or any part thereof to any person or corporation whatsoever and that he is the absolute owner thereof, free and clear of any and all lien, charge, claim and demand.

2. The Seller desires to sell the said secret process to the Purchaser and the Purchaser desires to purchase the same.

3. Upon the execution of this agreement, the Seller agrees to deliver to the Purchaser a manuscript description of his said secret process, accompanied by all memoranda, data and information now in his possession relative to the said secret process, and the Seller further agrees from time to time as new information or data come within his knowledge, forthwith to deliver written descriptions and memoranda thereof to the Purchaser. The Seller agrees that he will never directly or indirectly at any time impart or disclose knowledge or information of the said secret process or improvements thereon, to any person except those persons designated by the Purchaser.

4. The Seller agrees forthwith fully and correctly to instruct at least two persons designated by the Purchaser in such secret process, and in the practical application and use thereof, and the Seller agrees that he will at any time in the future when consistent and convenient with his other business, continue and renew such instruction of such persons or of such other persons as may from time to time be designated by the Purchaser, both in the secret process now known to him and in the practical application thereof and in any improvement thereof. If either of the two persons designated to be instructed as aforesaid should be incapacitated or should fail to have the ability or willingness to learn the said process and the practical application thereof from the Seller, then the Seller shall so notify the Purchaser and the Purchaser shall designate another person to be instructed, and the Seller agrees fully and correctly to instruct such substitute, and the Seller's obligation to instruct hereunder shall not be fulfilled until he shall have so instructed two persons designated by the Purchaser. All instruction shall be at the Seller's shop unless work at some other place shall be necessary to complete such instruction.

5. The Purchaser agrees to pay the Seller as the purchase price for the said formula and in consideration of his instruction, a royalty ofdollars, untildollars shall thus have been paid to the Seller by the Purchaser. The Purchaser agrees to render statements to the Seller, and to accompany such statement by a remittance for the

royalty, and the Purchaser agrees to continue to render such statements until the Seller shall have been paid dollars without interest and without deduction of any kind.

6. The Purchaser agrees immediately upon the completion of the instruction of its representatives to enter upon and by all reasonable endeavors to promote the manufacture and sale of manufactured by the use of said process, until such royalties shall have been paid in full.

7. The Purchaser agrees to permit the Seller not oftener than to examine its books and vouchers in relation to sales of either in person or by a competent and trustworthy accountant, until shall have been paid.

Contract for Sale of Business Including Good Will with Covenant Not to Compete

Williston—Sections 141, 413, 495, 497, 752, 781, 787, 829n.,
872, 1022, 1406, 1442, 1446, 1636 to 1658;

Diamond Match Co. v. Roeber, 106 N. Y. 473, 13 N. E. 419.

AGREEMENT made between hereinafter designated the Seller, and hereinafter designated the Purchaser, WITNESSETH, as follows:

1. The Seller, for the consideration hereinafter mentioned, for himself, his heirs, executors and administrators, covenants, promises, grants and agrees, to and with the Purchaser, his heirs, executors, administrators and assigns, that he will, on or before, grant and convey by a deed with full covenants and warranty unto the said Purchaser, his heirs and assigns in fee simple, clear of all liens and encumbrances whatever excepting all that certain lot of land situated with the factory and buildings thereon.

2. The Seller agrees on or before said to bargain, sell, transfer and deliver unto the Purchaser all the machinery, tools, implements and appliances of every kind whatsoever, now in said buildings, including all the articles and items enumerated in the schedule hereunto annexed, and also including all articles and items of machinery, tools, implements and appliances that may have been omitted from said schedule, that are now used or designed to be used by the Seller in the prosecution of the business, together with the good will of

the said business of the Seller and the use of his name therein, and the exclusive right to all his trade-marks and labels as used and owned by him in connection with said business.

3. The Purchaser covenants promises and agrees to pay or cause to be paid to the Seller, his executors, administrators or assigns the dollars, in manner following, viz.: Upon the execution and delivery of the deed of conveyance of said land and premises as aforesaid, and the sale and delivery of all the machinery, tools, implements and appliances as aforesaid, with the good will of said business, and the use of the name of the Seller and the exclusive right to all his trade-marks and labels as aforesaid, to deliver to the Seller, his executors, administrators or assigns, shares of the increased capital stock of the Company, to be hereafter issued by the said company, at the par value thereof, amounting in the whole to the said sum of dollars. The Purchaser assumes and agrees to pay, the said mortgage of dollars on said land and premises, together with the interest on the same.

4. The Seller agrees, on or before the said , to sell and deliver to the Purchaser, all of his stock of finished and unfinished goods and materials for making , and the Purchaser agrees to purchase said stock of goods and materials at fair and equitable prices.

5. In consideration of the premises, the Seller covenants and agrees that upon the delivery to him of the capital stock of said company as aforesaid, the Seller shall and will become bound unto the Purchaser, his representatives and assigns, in the sum of dollars as liquidated damages; that the Seller shall not and will not at any time thereafter, directly or indirectly, engage in the manufacture or sale of within the limits of the United States of America and the Territories thereof, nor aid or assist any one else to do so within said limits, nor have any interest, directly or indirectly, in the business of manufacturing and selling within said limits, except as an employee of the Seller.

6. This agreement shall apply to and bind the heirs, executors, administrators, successors and assigns of the parties.

Contract Appointing Exclusive Sales Agent

Williston—Sections 90, 279, 280, 653, 1406, 1446, 1645, 1700n.;

Champion Spark Plug Co. *v.* Automobile Sundries Co., 273 Fed. 74.

AGREEMENT made between, hereinafter designated as Principal, and, hereinafter designated the Agent,

WITNESSETH:

1. This agreement shall be valid and binding upon each of the parties hereto and their respective successors and assigns for the term of years from the date of execution hereof.

2. The Agent is hereby made and constituted sales agent and distributor of the Principal, with exclusive and sole right to sell and distribute the products of the Principal known as in the following described territory, viz.:

(If it is intended to give agent exclusive rights on all products of the Principal whether then existing or afterwards acquired, add "whether now owned, possessed or distributed by the Principal or hereafter acquired.")

3. The Principal agrees to sell its products above described to the Agent at the following prices:

4. The Principal agrees to properly pack and securely strap goods ordered by the Agent and to deliver same f. o. b. City.

5. The Agent shall pay the Principal promptly for all goods sold under this agreement and delivered to the order of the Agent during the last preceding calendar month and the Agent shall be entitled to a discount of per cent. for cash paid on or before the tenth of the month following purchases.

6. The Principal agrees that during the life of this agreement, it will not sell or cause any of its articles to be sold in the above-described territory except through the Agent and to

refer all inquiries concerning its product from the above-described territory that may be received by it through any source or by any means whatsoever, to the Agent for attention. It is understood and agreed that this means all local export commission houses that are generally known or described as such and whose inquiries indicate that the product is for consumption in foreign countries.

7. The Agent agrees to use its best efforts in the promotion and sale of the product of the Principal in the above-described territory, and through its agencies, travelling representatives, correspondence and other methods at its command to promote and increase the business in the products of the Principal; to appoint agents and sub-agents in and for various countries of the world and to act for the Principal in a manner befitting its position as sole agent.

8. The Principal shall as far as it is able furnish the Agent promptly with such quantities of any of its products as the Agent may require, shall not advance the prices on its product to the Agent beyond those in effect on the date of execution hereof and shall give the Agent at all times the benefit and advantage of its lowest published prices and discounts on its products; shall furnish the Agent from time to time with reasonable quantities of literature and cuts for circularizing and promoting the sale of the products contemplated by this agreement, such literature to bear the name of the Agent as sole foreign distributor for the product of the Principal; and shall save the Agent harmless from all liability in law or equity for infringement of rights and patents held by other corporations or individuals that may result from the sale of the products of the Principal.

9. The Principal shall upon the receipt of any defective goods sold under this agreement, when such goods may be shown to have been originally defective in material or workmanship, replace or restore the same to the satisfaction of the Agent.

10. The Agent shall order not less than.....
of assorted sizes in lots of.....
or over as its needs may require during the first
 year of the term of this agreement and an increase of.....
(.....%) per cent. each succeeding year

over the preceding year during the term of this agreement and failing to do so the Principal may at its election at any time thereafter terminate this agreement by giving not less than days' notice in writing to the Agent. The above prices shall prevail during the life of this agreement, except that in case the first party should change its printed domestic wholesale price of cents for and cents for, the same ratio shall be preserved after months' due notice from the Principal to the Agent to enable them to adjust their prices with foreign distributors and to take care of such orders as may be in transit after any increased prices may go into effect locally. It is further agreed that furnished the Agent at the special prices herein indicated are for export only.

11. The Agent agrees to push the sale of in preference to any other makes, but does not agree not to sell any other for which it may receive orders.

12. It is agreed and understood that the Principal does not obligate itself to make deliveries of the orders if prevented by any cause from doing so, but that all orders placed by the Agent and not filled by the Principal shall be considered as sales made by the Agent in calculating the number of sold by it within any certain year or period of this agreement.

13. It is understood and agreed that the Agent shall have the privilege of cancelling any orders placed with the Principal that shall not have been filled by the Principal within days after date of the Agent's orders, such orders to be credited to the Agent on its volume business as herein specified.

Pledge of Stock as Collateral Security.

Williston—Secs. 173, 978, 1021, 1042-1044, 1064, 1678, 1817.

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, in consideration of financial accommodations, given, or to be given, or continued to the undersigned by the hereby agree with the said that whenever the undersigned shall become or remain directly, or contingently, indebted to the said

for money lent, or for money paid for the use or account of the undersigned, or for any overdraft or upon any endorsement, draft, guarantee or in any other manner whatsoever, or upon any other claim, the said shall then and thereafter have the following rights in addition to those created by the circumstances from which such indebtedness may arise against the undersigned, or his, or their executors, administrators or assigns, namely:

1. All securities deposited by the undersigned with said as collateral to any such loan or indebtedness of the undersigned to said shall also be held by said as security for any other liability of the undersigned to said whether then existing or thereafter contracted; and said shall also have a lien upon any balance of the deposit account of the undersigned with said existing from time to time, and upon all property of the undersigned of every description left with said for safe keeping or otherwise, or coming to the hands of said in any way, as security for any liability of the undersigned to said now existing or hereafter contracted.

2. Said shall at all times have the right to require from the undersigned that there shall be lodged with said as security for all existing liabilities of the undersigned to said approved collateral securities to an amount satisfactory to said and upon the failure of the undersigned at all times to keep a margin of securities with said for such liabilities of the undersigned, satisfactory to said or upon any failure in business or making of an insolvent assignment by the undersigned, then and in either event all liabilities of the undersigned to said shall at the option of said become immediately due and payable, notwithstanding any credit or time allowed to the undersigned by any instrument evidencing any of the said liabilities.

3. Upon failure of the undersigned either to pay any indebtedness to said when becoming or made due, to keep up the margin of collateral securities above provided for, then and in either event said may

immediately without advertisement, and without notice to the undersigned, sell any of the securities held by it as against any or all of the liabilities of the undersigned, at private sale or Broker's Board or otherwise and apply the proceeds of such sale as far as needed toward the payment of any or all of such liabilities, together with interest and expenses of sale, holding the undersigned responsible for any deficiency remaining unpaid after such application. If any such sale be at Broker's Board or at public auction, said may themselves be a purchaser at such sale free from any right or equity of redemption of the undersigned, such right and equity being hereby expressly waived and released. Upon default as aforesaid, said may also apply toward the payment of the said liabilities all balances of any deposit account of the undersigned with said then existing.

4. It is further agreed that these presents constitute a continuing agreement, applying to any and all future as well as to existing transactions between the undersigned and said

Agreement Between News Syndicate and Artist or Writer for Work to be Sold to Newspapers

Wheeler Syndicate, Inc., *v.* The Star Company, 231 N. Y. 99, 132 N. E. 907. Certiorari denied 42 Supt. Ct. Rep. 94.

AGREEMENT made between of hereinafter called the "Syndicate," and of hereinafter called the "Artist," WITNESSETH:

WHEREAS, the Artist is now an artist and cartoonist of extensive reputation throughout the English speaking world as the creator, author and producer of, and

WHEREAS, the Artist has received and is now receiving large compensation and reward from the said newspapers for the said, and

WHEREAS, the Syndicate desires to employ the Artist for a period of years to commence as soon as any contract or other engagement which he may now be under has terminated, to produce the said exclusively

for the Syndicate, to be sold by the Syndicate to such newspapers published at least six times a week as the Syndicate shall select and

WHEREAS, the Artist is willing to produce the said
 exclusively for the Syndicate, to be sold by the Syndicate to such newspapers as aforesaid upon the terms and conditions set forth in this contract:

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, and of the guarantee of the Publishing Company, publisher of of even date herewith, the parties hereto do hereby agree as follows:

1. The Syndicate hereby employes the Artist for the term of three (3) years from, to produce for the exclusive use of the Syndicate the, to be sold by the Syndicate as aforesaid during the said three (3) years; and the Artist hereby accepts the said employment and agrees to render the said services exclusively for the Syndicate upon the terms and conditions hereinafter named.

2. The Syndicate agrees to pay to the Artist for his exclusive services as herein described, the sum of \$. per week over and above all expenses, at the end of each and every week, to wit: At noon on each and every Saturday through the term of this contract; and this payment of \$. per week shall be a minimum payment and be made irrespective of the amount of the Artist's percentage of the earnings hereinafter mentioned, or cost of production, the intention of this clause being that the Syndicate guarantees to the Artist that he shall receive from the Syndicate for his said exclusive services the sum of at least \$. per week for each and every week during the term of this agreement.

3. The Syndicate also agrees to pay to the Artist throughout the term of this agreement, % of the gross amount of money received by the Syndicate from the sales made by the Syndicate of the said the said newspapers as aforesaid, the remaining % of the said amount to be retained by the Syndicate. The Artist agrees to bear % of the cost of the said and making the therefor, which are sent to the said newspapers as aforesaid, and the

cost of copyrighting the said, the remaining
% of said expenses to be borne by the Syndicate. The
 guaranteed \$ per week to be paid to the Artist
 as herein provided shall be part payment in advance on account
 of the said% to be paid him; but, if during
 any week the said% of the gross amount
 received by the Syndicate shall be less than \$
 the difference between the amount of the said%
 and the \$ guarantee shall not be deducted
 from any future%, but each week shall be
 considered as a unit and during each week the Artist shall
 receive% of the gross amount received by
 the Syndicate, which payment to the Artist in any event shall
 not be less in any one week than \$

4. The Syndicate shall keep accurate books of the amount of
 the said gross sales and the said cost of
 and copyrighting, and shall render an account in detail
 to the Artist on the of each month, beginning,
 showing the gross amount of money received from the news-
 papers during the previous calendar month for the said
, the cost of and
 copyrighting, and upon such statement being rendered, the
 Syndicate shall pay to the Artist the additional amount due
 under the terms of this agreement.

5. It is agreed that the Artist or his duly authorized agents,
 shall have the right at all times to examine the books of account
 of the Syndicate in which the accounts pursuant to this agree-
 ment are kept.

6. It is agreed that should any question arise by reason of
 legal proceedings brought by a third party, or by either or both
 of the parties to this agreement against a third party, as to the
 right of the Artist to produce, or any newspaper to publish, the
 said, the expenses of such litigation
 shall be borne equally by the said Artist and by the said Syndi-
 cate, share and share alike. The Artist agrees that under this
 arrangement he will permit an action or actions, or proceeding
 or proceedings, to be maintained in his, the Artist's name to
 protect the said, whenever it shall be de-
 cided by counsel representing the parties hereto so to do.

7. The Artist agrees that throughout the term of this contract he will do everything in his power to make the said
 salable in the best possible manner to the newspapers as aforesaid, and that they shall all be by him in every respect personally. The Artist agrees that the services hereby contracted for shall be rendered exclusively to the Syndicate for newspapers as aforesaid, and the Artist agrees that he will not render the same or any similar services during the three (3) years covered by this contract to any newspaper or to any periodical published once each month or oftener, directly or indirectly, except through the Syndicate as provided for in this agreement.

8. It is further agreed that if the Artist shall during the term of this agreement desire to produce a page of , for publication in newspapers, or any for publication in newspapers other than covered by this agreement, the Syndicate, if it so desires, shall handle the same upon the terms of % of the gross amount received, to the Artist, and thereof to the Syndicate, the same ratio of expenses as hereinbefore provided to be borne by each.

9. The Artist agrees to use his best efforts to produce of the said each week throughout the term of this agreement as herein provided, so that the Syndicate shall be able to sell to the newspapers as aforesaid a service covering six days each week; but it is mutually agreed that during some weeks the Artist may, if necessary, produce less than . . . of the said ; but the Artist does hereby agree that he will produce during each period of twelve months throughout the term of this agreement as herein provided (the said period of twelve months to commence with of each year), not less than of the said and the Artist agrees that he will furnish the Syndicate with the said or more of the said each year in such manner as will enable the newspapers to which the Syndicate sells this service to complete the publication of the said or more during the year beginning the in each year, at a rate of publishing not more than one of the said per day.

10. It is agreed that the Artist will apply for and take out accident and health insurance policies for a sufficient amount to cover the guarantee of \$..... per week; that the Artist will assign these policies to the Syndicate; and that the said Syndicate will pay the premiums upon the said policies during the term of this agreement. It is mutually agreed that the insurance provided for in this paragraph shall be actually taken out and be operative before the obligations of the Syndicate under this contract shall become effective.

11. It is further agreed that should the Artist become incapacitated by illness for a period of one month or longer, that period shall be added to the term of this agreement. The Syndicate agrees that it will grant to the Artist two successive weeks' vacation during each year, during which two weeks the Syndicate shall not receive any of the said....., but shall nevertheless pay the Artist \$..... per week minimum guarantee as herein provided. It is further agreed that the Syndicate will grant the Artist an additional two weeks' vacation under the same conditions, the Artist to receive, however, the sum of..... per week minimum guarantee for the said additional two weeks.

12. The Syndicate agrees that it will copyright the said in the name of the Artist and that it will not make any changes or alterations in any of them without the consent of the Artist; but the Artist agrees that he will give to the Syndicate joint editorial supervision with him over the said during the operation of this contract in so far as the adaptability of the said..... to the general policy of the newspapers to which the Syndicate shall sell this service, is concerned.

13. It is agreed that there is not anything in this agreement which shall be construed to prevent the Artist from publishing the said..... in book form after the same has been published in the newspapers to which the Syndicate shall sell this service, or from..... the said..... upon the public stage, or authorizing the use of..... characters in moving pictures, or authorizing the use of..... characters by theatrical troupes, the Artist reserving all rights

except the sale of the said to newspapers and periodicals as hereinbefore provided.

14. It is agreed that should any newspaper which has published the said prior to, continue after that date to publish, without the consent of the Syndicate, any purporting to be, that fact shall not in any way affect the terms of this agreement; but the Artist agrees that he will permit the Syndicate to maintain in his, the Artist's, name an action or actions against any such newspaper or newspapers to prevent such 'duplication' if counsel representing both parties hereto shall decide so to do, under the terms mentioned in paragraph 6.

15. The Syndicate agrees that it will not at any time during the term of this agreement, or during any extension thereof, or at any time in the future, attempt to substitute or substitute, or attempt to duplicate or duplicate the or other artistic productions of the Artist; and the Syndicate further agrees that it will use its best efforts to have the said sold and published in the largest number of newspapers possible, and to have the said newspapers advertise the publication of the said at least two weeks in advance of their appearance. It is further agreed that the Syndicate will contract with the newspapers printing the said that they shall always print the legend in type at least as large as that of the caption or title.

16. It is agreed that the Artist shall have the privilege of approving all contracts entered into by the Syndicate and renewals of the same which expire before the date of expiration of this agreement.

17. It is further agreed that should the Syndicate be legally prevented or legally hindered temporarily from marketing the said, that during the said hindrance the operation of this agreement shall be suspended, and any period of suspension thus caused shall be added to the term of this agreement. But if the Syndicate shall be legally prevented or legally hindered from using the that prevention or hindrance shall in no way affect the operation of this contract so long as the said Artist shall not be prevented from

furnishing, or the newspapers from publishing, the said
 themselves.

Agreement for Sale of Accounts by Merchant to Finance Company—Power of Attorney

Greey v. Dockendorff, 231 U. S. 513, 34 Sup. Ct. Rep. 166;
Van Iderstine v. National Discount Co., 227 U. S. 575, 33
 Sup. Ct. Rep. 343;

Coder v. Arts, 213 U. S. 223, 29 Sup. Ct. Rep. 436.

AGREEMENT made this day of 19 . . .
 between, hereinafter designated as the Company,
 and hereinafter designated as the Customer, WITNESSETH:

WHEREAS the Customer is desirous of realizing cash on all
 accounts created by the sale of goods ordered and shipped to
 his customers.

NOW, THEREFORE, in consideration of the covenants and
 agreements to be kept and performed by the respective parties
 hereto, it is hereby agreed between them as follows:

The Company agrees to secure funds and out of same to
 advance to the Customer from time to time per cent.
 on confirmation of the net face value of such accounts as may
 be accepted by the Company upon the following terms and
 conditions:

1. The Customer may submit all his orders to the Company
 for approval of credit.

2. The Customer shall deliver to the Company a correct
 original and duplicate invoice for goods actually sold and
 delivered with original shipping receipts or bills of lading, and
 an assignment of the account upon the form attached hereto,
 and made a part of this agreement. The Company reserves the
 right to cancel its approval of any order or part thereof.

3. Should the Company disapprove of an order, the Customer
 may fill said order, but the account must be assigned as other
 accounts, and is to be held as security for all obligations of the
 Customer to the Company, subject to all the conditions con-
 tained in this agreement.

4. It is understood and agreed that the Company in no wise
 guarantees payment of any account.

5. It is further agreed that the Company will credit the Customer with all sums of money realized from the collection of accounts, and that said accounts transferred and assigned to the Company, together with any and all other accounts, sums of money, debts and demands, whatsoever, belonging to said Customer and which may be received by the Company, shall be held as general security for any and all advances, claims, debts, dues and demands of the said Customer, due or to become due, or that may hereafter be contracted with the Company, together with the charges and expenses of the Company specified in the Fifth, Sixth, Seventh and Tenth paragraphs of this agreement, with full right and power to the Company to demand such additional security as it may deem necessary, the said Customer to remain liable to the Company for any deficiency resulting from said Accounts.

6. The Customer authorizes and empowers the Company by its officers to endorse the name of the Customer on any and all checks, vouchers, notes, drafts, or other negotiable instruments or commercial paper which may be payable to the order of the Customer or endorsed over to the Customer, and receive remittances for accounts assigned and transferred to the Company, as aforesaid, or otherwise; to collect and receive all moneys, to give its receipt therefor, to sue for, compromise, settle and collect said accounts in its own name, or in the name of the Customer, or otherwise, it being distinctly understood that all and every expense incurred in the collection of accounts together with attorneys' fees, are to be charged to and paid by the Customer.

7. The Customer agrees to pay to the Company in cash or allow the Company, if it so elects, to retain from any money collected or received upon the accounts of the Customer, a commission of per cent. on the gross amount of accounts of the Customer to reimburse the Company for services rendered or to be rendered' in the collection of the accounts, assisting in extending credit, securing references and reports and generally assisting the Customer with his credit department. The Customer also agrees to reimburse the Company for such outlays as exchange on checks, and postage.

8. The Company shall further be entitled to charge interest

at the rate of six per centum per annum on all moneys advanced by it to the said Customer.

9. All invoices of accounts transferred to the Company as aforesaid, shall contain thereon the statement that the Company may notify the debtors that the said accounts have been transferred and are payable to the Company; should any moneys on any account on which advances have been made by the Company, be collected by the Customer, the identical checks or moneys constituting such remittances shall be immediately handed over to the Company.

10. The Customer hereby guarantees the correctness and bona fides of all accounts assigned, and payment of same, and that all merchandise sold, shipped and delivered and constituting such accounts will be packed under personal supervision and legibly marked with the address of the consignee and delivered to common carriers against their receipt or bills of lading to be forwarded to their respective destinations.

11. Should any debtor from whom any account is owing die, or make a general assignment, or any transfer of his, her, its or their property, or should a judgment be taken against such debtor, or any such debtor become insolvent as construed by the Bankruptcy Laws, or should any account become due and owing, according to the terms of invoice and not be paid, then the Customer upon demand of the Company shall pay the said Company in cash, or allow the said Company, if it so elects, to deduct from any balance, which it may have on hand, or out of any sum which it may hereafter have on hand, or out of any sum which it may hereafter have on hand to the credit of the Customer, any advances made on such account, together with the charges of the Company, specified in the Fifth, Sixth, and Seventh clauses of this agreement.

12. Should any Customer indebted to the Company make a general assignment or any transfer of his, her, its or their property or should a judgment be taken against such Customer or should such Customer become insolvent, or should proceedings in Bankruptcy be instituted against such Customer, or should any such Customer become insolvent as construed by the Bankruptcy Laws of the Company shall have the right to place all accounts transferred to it as aforesaid, due

or to become due, in the hands of its attorneys, or collection agency, and in addition to the charges and expenses hereinabove specified, the account of the said Customer shall be changed with and the said Customer shall pay all and every expense incurred in the collection of said accounts, together with a charge of ten per cent fees on each and every account turned over for collection as aforesaid.

13. Should the Customer allow any claim or deduction on any account assigned to the Company, notice thereof must be immediately given by the Customer to the Company, and thereupon the Customer shall pay in cash or allow the said Company, if it so elects, to deduct from any balance which it may have on hand, or out of any sum which it may thereafter have on hand to the credit of the Customer for the claim allowed.

14. Should any goods be returned to the Customer on any account assigned to the Company notice thereof must be immediately given by the Customer to the Company, and it shall be optional with the Company either to retain its title to the merchandise returned and to take possession of the same, or to surrender the same upon receiving payment therefor in cash, or at any further option of the Company to deduct the value of the goods returned from any balance which it may have on hand to the credit of the Customer.

15. Should any goods, on accounts assigned by the Customer as aforesaid, be returned to the Company, the said Company shall have the right to take, hold, assign, warehouse, store, sell, transfer or set over the said returned merchandise in whole or in part, and receive the proceeds of the said returned merchandise, and shall credit the customer with all sums of money realized thereon, less the expense of so doing of the Company.

16. The Customer agrees that any account transferred to the Company will have the transfer properly entered in his ledger stating that this account is the property of

17. The Company or its representatives shall have the privilege of investigating the bona fides of all accounts upon which advances have been made to the Customer.

18. The Customer agrees not to procure advances on any accounts from any sources other than the Company during the

continuance of this agreement, and will assign all the accounts of the Business to the Company as soon as the merchandise is shipped, and furthermore gives to the Company the privilege to examine all the books used in connection with the Customer's business at any time that the said Company may desire.

19. This agreement shall be a continuing one, subject to a discontinuance upon notice by either party to the other, the Customer, however, reserving the right to discontinue this agreement by settling his account with the Company in full.

20. The foregoing statement, representations and covenants are made by the Customer for the express purpose of inducing the Company to enter into this agreement, and to make advances to said customers on accounts as hereinbefore set forth. The waiver in any instance by the Company of any of its rights, privileges or options hereunder shall not operate as a waiver in any other instance.

21. The within agreement shall be binding on and enure to the benefit of the said parties, their legal representatives and assigns.

ASSIGNMENT (IN CONNECTION WITH THE FOREGOING)

KNOW ALL MEN BY THESE PRESENTS, That for value received, we have bargained, sold, transferred, assigned, and set over and by these presents do bargain, sell, transfer, assign and set over unto, its successors and assigns, the claim and account set forth on the reverse side hereof, and all right, title and interest therein, and in and to any and all of the merchandise, the sale of which created said account, to have and to hold the said claim or account and any and all merchandise returned or unaccepted thereon, unto said, its successors and assigns, for their own use and benefit forever.

We hereby constitute and appoint said our true and lawful attorney irrevocable in our name or otherwise but to their own use and benefit to sell, transfer, assign, set over, compromise, pledge, discharge and collect the whole or any part of said claim, or account, and to receive all moneys due or

to grow due thereon and to take, hold, transfer, assign, set over, or sell and receive the proceeds of, the whole or any part of said returned merchandise and for said purposes to do all acts and things necessary or proper in the premises, and one or more persons to substitute with like power, hereby ratifying and confirming all that our said attorney or attorneys, or his or their substitute or substitutes shall lawfully do by virtue hereof.

We hereby certify and covenant that the said claim or account is a true and correct statement of a bona fide indebtedness incurred by the debtor therein named, upon the terms therein stated, now outstanding and owing to the full amount thereof for said merchandise actually sold and delivered and accepted by said debtor; that no payment has been made thereon, and that there are no defenses, offsets or counterclaims thereto; that said merchandise was, at the time of said sale, owned by us in our own right and free from any lien or encumbrance, and that said claim or account is free from all encumbrance except such as is held by said.....under this instrument.

This assignment is made in furtherance of the existing agreement made between the undersigned and.....

Dated, New York,.....19..

Agreement for Sale of Accounts to Finance Company— Another Form

AGREEMENT, made this.....day of.....19.., between....., a corporation organized under the State of New York (hereinafter designated as the Company) and..... (hereinafter designated as the Customer).

WHEREAS the Customer declares himself solvent and desires to obtain from the Company advances upon the security of outstanding accounts of the Customer, and to make use of the facilities and the services offered by the Company for the development of the Customer's business:

NOW THEREFORE THIS AGREEMENT WITNESSETH:

1. The Customer agrees to sell, assign and transfer to the Company all outstanding accounts as the same are created in

the Customer's business from and by sales of merchandise therein.

2. The Company agrees to advance to the Customer per centum of the net face value of said outstanding accounts approved by it. Said advances so to be made are subject to the following terms and conditions:

(a) The Customer shall in every instance deliver to the Company accurate invoices of sales resulting in outstanding accounts, with shipping receipts, and assignments of the accounts upon the form attached to

(b) If the same are approved by the Company, the Customer shall be entitled to receive advances thereon.

3. All accounts which the Company is to make advances upon are to be owned by the Customer solely and absolutely at the time such advancement is requested, and are to be the result of sales of the Customer's own property and not of assigned merchandise. The Customer warrants and guarantees the correctness, accuracy and bona fides of all orders and the prices thereof, and the validity and genuineness of all accounts assigned, and hereby guarantees the collections at maturity of said accounts during the continuance of this agreement.

4. The Customer hereby authorizes and empowers the Company to collect all accounts assigned by the Customer to the Company and to endorse the name of the Customer upon any and all commercial papers received in payments of said accounts and all commercial papers received in payments of said accounts.

5. The Company is also authorized and empowered to sue for and collect in its own name, or in the name of the Customer, any and all accounts against any and all debtors if not paid at maturity. All legal and other expenses incurred by the Company in defending its title to the account assigned or the merchandise representing the accounts, shall also be borne by the Customer.

6. Should any debtor by whom an account matured or unmatured is owing, fail, become insolvent, become a judgment debtor or become a party to proceedings in bankruptcy in which adjudication of the Customer as a bankrupt is sought,

then the Customer shall upon request, pay to the Company the full amount of such account or accounts, or allow the Company to deduct from any balance which the Company may thereafter have on hand, to the credit of the Customer, any and all advances made on said accounts, as herein specified, and the same agreement is hereby made with respect to all accounts which shall not have been paid within days from the day of their maturity.

7. Should any debtor return or refuse to accept merchandise invoiced to him, the Customer shall at once and as often as the same may occur notify the Company of such facts and it shall be optional with the Company to retain title to the merchandise so returned or not accepted, or to surrender the same to the Customer upon payment therefor; or at the further option of the Company to deduct the amount of the goods returned or not accepted from any balance which the Company may have on hand, or out of any sum which the Company may thereafter have on hand to the credit of the Customer. Should the Company elect to retain title to merchandise so returned or not accepted, the Company may then at its further option, sell the said merchandise at private or public sale upon days' notice to the Customer's account with the proceeds of such sale.

8. The Company or its representatives shall have the privilege of investigating the validity of all accounts upon which advances have been made, and may at all reasonable times examine the books of accounts of the Customer for that purpose.

9. The Company shall have the right to make compromise or settlement with debtors where the amount of the invoice is in dispute, or where claims for allowances on discounts or returned goods is made, or where any debtor has failed to make payments when due; but before consummating same the Company shall notify the Customer who shall thereupon be entitled to make a reassignment of such account upon payment of the amount thereof to the Company.

10. The Company shall be entitled to charge interest at the rate of 6% per annum on money advanced by it to the Customer, computed from the time of such advancement to

the time of the actual collection of said accounts, including any and all additional time which shall be required by Banks in collecting remittance and making returns to the Company.

11. The term of credit upon which sales shall be made by the Customer to customers shall not exceed days.

12. The Company agrees to keep true and correct records of the accounts assigned and delivered to the Company, by the Customer, and true and correct records of the amount owing on said accounts by each debtor, the respective dates of maturity, and the amount paid thereon by said debtor. The Customer shall be entitled to receive information from these records upon request.

13. The Company agrees to lend its best efforts to the collection of all accounts assigned to it by the Customer, and render to all such debtors proper bills and statements from time to time, when necessary and advisable.

14. The Company agrees to investigate when necessary the standing and general credit of debtors and upon request to furnish to Customer confidentially all information concerning said debtors as the Company may have and the Customer may request.

15. The Company agrees to advise the Customer whenever requested, regarding the conduct and policy of the Customer's business.

16. In consideration of the said services to be rendered by the Company to the Customer, and of the obligations by it herein assumed, the Customer agrees to pay to the Company a commission of per annum on the aggregate in the amount of the face value of the accounts assigned to and accepted by the Company. This rate of commission is made upon the express representation of the Customer that the face value of the accounts to be assigned hereunder will aggregate dollars per annum, and it is agreed that the Company shall have the option to receive from the Customer, and the Customer agrees to pay to the Company commission at the rate above specified, upon the said amount of dollars during each year that this agreement shall be in force, and proportionate amount thereof during each fraction of a year that this

agreement shall be in force. The Company may at its option, retain said commission from any and all moneys of the Customer in its hands.

17. Should any remittances on any accounts on which advances have been made by the Company to the Customer reach the Customer, the Customer shall hold the same in trust for the Company, and shall immediately turn over to the Company the identical remittance or remittances.

18. The terms of this agreement shall be from the day of, 19.., to the day of, 19... Thereafter this agreement shall continue from year to year unless days prior to the expiration of any given year, notice in writing of election to discontinue shall be given by the Customer to the Company. The Company shall have the right to terminate this agreement any time upon days' notice in writing.

19. In the event of any misrepresentation by the Customer concerning any accounts assigned by the Customer to the Company or concerning any matter pertaining to this agreement or in the event of any violation by the Customer of any of the provisions of this agreement, the said agreement may be at once terminated by the Company without notice.

20. This agreement shall be construed according to the laws of the State of

Agreement between Banker and Merchant for Advances against Assigned Accounts—Assignment of Accounts

AGREEMENT made between hereinafter called the "Banker" and hereinafter called the "Assignor."

The parties hereto mutually covenant and agree as follows:—

1. The Assignor agrees to assign and transfer to the Banker during the continuance of this agreement all outstanding accounts as may be created in the Assignor's business. The Banker agrees to procure funds and to advance to the Assignor per cent. of the face value of such accounts as may be accepted and approved by the Banker, less all discounts, provided the Assignor shall in each instance deliver to the Banker

accurate, original and duplicate invoices of the sales creating such outstanding accounts with the original Bills of Lading, shipping or express receipts or other evidence of shipment or delivery, and also an assignment of the account upon the form attached hereto. The Banker shall have.....days after the receipt of said assigned accounts and original Bills of Lading, shipping or express receipts, within which to accept and approve such accounts and advance the funds thereon.

2. The Banker shall have the right to notify the debtors that said accounts have been transferred and are payable to the Banker and should any moneys on any account upon which advances have been made by the Banker be collected by the Assignor in whole or in part, the Assignor shall hold the same in trust for the Banker and shall immediately turn over to the Banker the identical original remittance or remittances.

3. The Assignor agrees to pay interest at the rate of six per cent. per annum on moneys advanced by the Banker to be computed from the time of such advance to the time of the actual repayment to the Banker.

4. In the event that any account be not paid to the Banker within.....days after maturity, or, in the event that any debtor shall become insolvent, or make a general assignment or transfer of property, or should judgment be taken, or proceedings in bankruptcy be instituted against such debtor, then, the Assignor, upon demand of the Banker, shall pay to the Banker in cash or allow the Banker, if it so elects, to deduct from any balance which it may then or thereafter have on hand to the credit of the Assignor, all advances made on such accounts, together with the charges, expenses, interest and commission of the Banker as herein provided; or the Banker may at its option, transfer such account to an "Overdue Collateral Account," and all moneys thereafter collected thereon shall be retained by the Banker and credited to the Assignor, and the Assignor agrees to replace such accounts by new assigned accounts satisfactory to the Banker and such new accounts shall be held by the Banker in the place of and as security for the advances heretofore made on the original accounts.

5. The title to all merchandise which any debtor may return

or refuse to accept is in the Banker. Should the Assignor have any merchandise returned to him, or not accepted, on any account assigned to the Banker, or should information be received by the Assignor of such return or non-acceptance, the Assignor shall immediately give notice to the Banker and the Banker shall thereupon have the option either to retain its title to the merchandise so returned or not accepted or to surrender the same to the Assignor upon receiving payment therefor in cash, or at the further option of the Banker to deduct the value of the goods returned or not accepted from any balance which the Banker may then or thereafter have on hand to the credit of the Assignor.

6. The Banker shall have the right to collect and receive all moneys; to give receipt therefor; to sue for or collect said accounts in its own name or in the name of the Assignor or otherwise, but without any liability for negligence for itself or any agent in the manner of collecting or handling any accounts. All and any expense incurred in the collection of accounts, together with the attorneys' fees and exchange on checks are to be charged to and paid by the Assignor.

7. The Banker shall have the right to compromise or settle with debtors where the amount of the invoices is in dispute or where claims for allowances may be made or where any debtor has failed to make payment when due; but before consummating the same, the Banker shall notify the Assignor, who shall thereupon be entitled to take a re-assignment of such account upon payment of the amount thereof to the Banker.

8. The Banker agrees to keep true and accurate records of the accounts assigned and true and correct records of the amounts owing on said accounts, the respective dates of maturity and the amounts paid thereon by the debtor and the Assignor shall be entitled to receive information from these records on request. The Banker further agrees to use its best endeavors to collect said accounts and to render to debtors proper bills and statements from time to time as may be necessary or advisable; to investigate into the financial standing and credit of the debtors and to furnish the Assignor, when requested, such confidential information as it may have, and the Banker further agrees to advise the Assignor whenever

requested, regarding the conduct and policy of the Assignor's business.

9. In consideration of the said services, the Assignor agrees to pay to the Banker per cent. on the aggregate in amount of the face value of all accounts assigned to and accepted by the Banker, but the Banker may, at its option, retain said commissions from any and all moneys of the Assignor in its hands.

10. The Banker shall have the right at any time during business hours to examine the books of account of the Assignor.

11. The Assignor agrees not to procure advances on any accounts from any source other than the Banker during the continuance of this agreement. The Assignor hereby guarantees the correctness and good faith of all accounts assigned and the payment of same.

12. The Banker agrees to remit to the Assignor all sums received by him on the collection of the aforesaid accounts after deducting all advances made thereon by the Banker together with the interest, commission, advances and charges as herein provided.

13. In the event of any misrepresentation of the Assignor as to any account assigned by the Assignor to the Banker in matters pertaining to this agreement, or in the event of any violation by the Assignor of any of the provisions of this agreement or in case of failure or insolvency on the part of the Assignor, this agreement may be at once terminated by the Banker without notice and any and all claims against the Assignor by the Banker, shall, at the option of the Banker, immediately become due and payable.

14. It is agreed that if this account be discontinued for any reason, the Banker shall have the right to collect all moneys advanced, plus commission, interest, charges and expenses before paying the Assignor any equities.

15. The Banker shall have a general Banker's Lien on all moneys, property or other collateral in its possession, for any and all indebtedness which may exist under this agreement. The word "debtor" in this agreement refers to the customers of the Assignor mentioned in the assigned accounts.

16. The term of this agreement shall be from the

day of....., 19.., to the.....day of....., 19.., Thereafter this agreement shall continue from year to year, unless written notice of election to discontinue shall be given sixty days prior to the expiration of any year, by either party to the other.

This contract shall be construed according to the law of the State of.....

ASSIGNMENT (IN CONNECTION WITH THE FOREGOING)

For value received, we do hereby sell, assign, transfer and set over to the Banker, his successors and assigns, the claims and account set forth on the reverse side hereof, and all our right, title and interest therein and to any and all of the merchandise therein described, and any and all the merchandise returned or unaccepted thereon. We do hereby covenant and guarantee that the said claim and account is a true and correct statement of an actual indebtedness incurred by the debtor therein named, upon the terms therein stated now outstanding and owing to the full amount thereof for merchandise actually sold and delivered to and accepted by said debtor; that no payments have been made on said account, that there are no defenses, counterclaims or offsets thereto; that the merchandise was at the time of the said sale owned by the undersigned, free from any lien or encumbrance, and that said claim and account is free from any lien or encumbrance except such as is held by the Banker pursuant to this instrument.

We hereby constitute and appoint said Banker, our true and lawful attorney irrevocable, in our name or otherwise but to his own use and benefit, to sell, assign, transfer, set over, compromise, pledge, discharge and collect the whole or any part of the said claim or account and the whole or any part of any merchandise that may be returned or unaccepted, and to receipt for and endorse in the name of the undersigned, any and all checks or remittances that may be made on account thereof, and for the said purposes to do all things necessary or advisable in the premises with full power of substitution, hereby ratifying and confirming all that the Banker or his substitute shall lawfully do hereunder.

Dated,.....19..

Factors' Agreements

Williston—Sections 484, 446n., 655, 720n.;

See also:

New York Personal Property Law, Section 45.

Ludvigh *v.* American Woolen Company, 231 U. S. 522, 34
Sup. Ct. Rep. 161;

Collier on Bankruptcy, 12th Ed., pp. 1069 and 1149.

Spain *v.* Talcott, 165 App. Div. 815, 152 N. Y. Supp.
611.

AGREEMENT made.....between.....
hereinafter referred to as the Factor, and.....
hereinafter referred to as the Principal, and.....
hereinafter referred to as the Managers, WITNESSETH:

WHEREAS the Factor is willing to act as factor for the Principal, provided the business conducted by the Principal is conducted under the terms and conditions hereinafter set forth, and is willing generally to assist in the conduct and management of said business; and

WHEREAS the Principal is to conduct a general.....business.....taking goods on consignment.....and selling said consigned goods; and

WHEREAS each and every one of the managers are to conduct the business of the Principal,—

Now, in consideration of the mutual covenants herein contained, it is agreed:—

1. The Principal hereby constitutes and appoints the Factor its sole factor.

2. The Principal agrees that it shall deliver and consign to the Factor all goods and merchandise purchased by the Principal or consigned to it for sale. All said goods and merchandise shall be and become the property of the Factor to secure all present and future advances, charges and commissions, and the Factor shall have title thereto, until actual delivery to customers on sales approved by the Factor, and shall have and maintain upon all such merchandise and goods and the accounts receivable growing out of the sale thereof, or the proceeds

thereof, a general lien to secure its advances, charges and commissions.

3. The said goods and merchandise shall be in the possession and custody of a representative of the Factor located in said premises, and said custody and possession shall be solely on behalf of the Factor, and no goods or merchandise shall be removed without the express consent of the Factor, and the Factor shall appoint a representative who shall be authorized and empowered and shall deliver merchandise to customers at such prices as the Principal may sell them, when sales are made in accordance with this contract.

4. The Factor shall have no responsibility for the prices obtained for goods and merchandise and shall be required only to account for the merchandise upon the basis of the prices obtained by the Principal.

5. The Factor, when it shall have approved in writing the credit of purchasers, terms and conditions of sale, shall assume all credit risks and responsibility attached thereto in accordance with the terms of this agreement, that is,—the Factor guarantees the solvency of and payment by such customers for goods purchased by such customers and accepted by them, but if such customers refuse or fail to pay on the ground that deliveries are not in accordance with contract, no responsibility shall be assumed by the Factor, and the Factor shall be entitled to charge the account of the Principal with the amount of said account, without any liability under this guarantee.

6. All expenses incurred in connection with the business of the Principal shall be chargeable to and be borne and be paid by the Principal, except that the expense of supervising and determining credits and the collection of accounts shall be borne and paid by the Factor. All insurance upon said goods shall be in the name of the Factor and in companies approved by it, the Factor, the solvency of which companies, however, it shall in no way be responsible for and the premiums may be paid by the Factor and charged to the Principal, or shall be paid by the Principal direct.

7. Immediately upon the sale of any merchandise by the Principal, the account receivable therefor shall become the property of the Factor and all such accounts receivable are

hereby assigned and transferred to the Factor. All such merchandise shall be billed and invoiced upon forms of bill or invoice, satisfactory to the Factor, and unless otherwise demanded by it, the said bills and invoices shall read,—“Bought of,” and shall bear the words “This bill is assigned and payable to signed, and the said signature of the Principal on said invoice or bill, whether printed, stamped or written, shall be deemed a valid and binding signature of the Principal, and the said endorsement thereof to the Factor, in addition to the assignment shall operate as a valid assignment of said account contained in this agreement. The Principal will also execute any form of further assignment which the Factor may request. With the express consent of the Factor in any particular case, the Principal may sell and deliver merchandise direct from to customers approved by the Factor, in accordance with paragraph “5” hereof, but in every such event the Principal will forward bills and invoices as aforementioned; and it is agreed that all accounts with said customers come within the terms of the within agreements and are assigned to the Factor by virtue of this instrument.

8. The Principal agrees, at all times to keep, save, hold, defend and indemnify the Factor against all actions, proceedings, claims, demands, losses, outlays, damage or expenses, including legal fees, which the Factor may in any wise incur in defending or prosecuting, settling or discontinuing any proceedings or actions or claims in consequence of or arising in any way out of merchandise losses or claims whether for breach of contract, failure to deliver merchandise, rejection of merchandise for any reason whatsoever, damage, destruction or loss of merchandise, partially or totally, breach of warranty, express or implied, or claim arising out of purchases, sales, transportation, collections on insurance, care or custody of said merchandise bought by the Principal from the time that the said merchandise was ordered until the same is finally paid for by a purchaser approved under the terms of this contract. The Principal agrees to indemnify and hold harmless the Factor from any loss or liability resulting from any acts or omissions of the Principal or of its employees in connection with the said

goods, or the sales thereof, and the Principal agrees that the Factor shall in no way be liable for any injury, damage to or loss of any goods or merchandise in its possession, whatsoever may be the cause of such injury, damage or loss.

9. The Principal shall have no authority to make any purchase, order or contract for the purchase of any goods or merchandise on behalf of the Factor, or to pledge the credit of the Factor for any purpose whatsoever, and shall have no authority to make any sale, or contract for sale, in the name of the Factor.

10. The salary of the representative of the factor, referred to in Paragraph "3," shall be chargeable to and borne by and paid by the Principal, except that the Factor agrees to pay the salary of the said representative to the extent of the portion of the said representative's time used in supervising credits and collections. The Factor shall not be responsible for any acts or omissions of the said person so designated, except as concerns credits and collections.

11. The Principal shall, at all times, maintain full and complete books of account at, or at such other place in which such business is conducted, and such books of account shall contain full and complete records of all sales, purchases and transactions of any and every nature had by the Principal in its business, and said books shall at all times be open to the inspection and examination of the Factor, its representative designated as provided herein, its officers and any other representative whom it may authorize to inspect and examine said books, with full power to make transcripts of the whole or any part thereof, and the Principal shall, as often as it shall be required to do so by the Factor, render full and complete records and reports of all acts and transactions had by it.

12. That an account current shall be rendered monthly by the Factor to the Principal on or before the day of each month, or as soon thereafter as said account can be made out, which account shall set forth the transactions during the preceding month, and in such account current interest shall be charged pro and con at the rate of per cent. per annum. On said account, the Principal shall be credited with the amount of all sales which have been approved by the Principal, as provided for in paragraph "5" of this agreement, where the

merchandise so sold has been accepted by the customer and such sums shall be credited as of the average due date with interest charged up to such average due date plus days which the parties agree shall constitute the average time lost in collections. Any accounts or claims which are not paid by customers because of anything other than the insolvency or impairment of credit of said customers shall be charged to the account of the Principal on the last day of the month during which said customers have refused to pay, with interest from the date of said charge.

13. The Factor shall receive, as compensation, for the services rendered under the terms of this agreement, and advances made to the Principal, an amount equal to per cent. on the net amount of all sales made by the Principal, and on all moneys collected from insurance companies on policies covering goods or merchandise purchased by or consigned to the Principal, such compensation to be charged on the account sales monthly. It is agreed that the Principal shall enter into no transactions of any kind which shall not be subject to the terms of this agreement. The Factor shall also receive as additional compensation a sum of money to be determined as follows:— per cent. of the earnings made by the Principal shall be paid to the Factor as such compensation, such earnings of the Principal to be computed by deducting from the gross earnings the necessary expenses for the carrying on of the business. Interest on capital shall be deducted as such expense; as a further expense, the salaries of the Managers shall be fixed as follows, and shall not be raised without the consent in writing of the Factor.

In determining gross earnings, an inventory is to be taken every months, commencing with the, In valuing merchandise, the cost or market value is to be taken whichever is the lower at the date of inventory. Fixtures shall be valued at cost less a depreciation of per cent. per annum. The compensation of the Factor shall be charged as an expense of the Principal, for all purposes, except the determination of the compensation itself, which shall be computed on the earnings determined as just indicated prior to and not subject to the payment of, or charges for any State or

Federal tax which the Principal may be liable to pay. That part of the compensation determined by the per cent. of the net earnings, as aforesaid, shall be payable to the Factor, it being agreed, however, that commencing with the,, the annual profits shall be the basis of compensation and should there be a loss shown in any one year, a payment having been made during the first half on a statement showing a profit for such first half, an adjustment is to be made between the parties; it being understood and agreed, however, that in no event is the Factor to be held accountable for any losses, the Factor merely being liable to repay to the Principal any profits made during the first half of a given year and paid on account of the annual profits which did not materialize. The Factor and Principal agree that the Factor may, subsequent to,, give the Principal notice that instead of receiving the compensation based upon per cent. of the earnings of the Principal, as just specified, the Factor shall receive in lieu and stead of said per cent. of the earnings a compensation of per cent. to be added to the aforementioned compensation of per cent., upon the same terms and conditions and to be charged in all respects in the same manner as said per cent.; it being the intention of the parties that if the Principal exercises this option, that then said per cent. shall read per cent. in the first sentence of this paragraph, and that portion of this paragraph commencing with the words "the Factor shall also receive as additional compensation" and ending with the words "on account of the annual profits which did not materialize" shall no longer be in operation and effect between the parties. It is understood, however, that the Factor shall be entitled to all rights under this paragraph as it now exists, which shall have accrued prior to date on which change becomes effective.

14. The Factor shall, from time to time, whenever requested by the Principal so to do, lend to the Principal sums of money, which sums, however, shall not exceed per cent., of the value of the merchandise at cost or market value, whichever is lower, and consigned under the terms of this agreement to the Factor and actually in the possession of the Factor.

The Principal will, whenever required by the Factor, inventory all such merchandise, at cost or market value, whichever is lower at the time of such inventory, and if, at any time, the value of such merchandise as so found shall be such that the total advances on the account current, together with the charges, compensation and interest due from the Principal to the Factor shall exceed the said per cent. of said value of the merchandise as so ascertained, the Principal will, upon days' notice, either pay to the Factor a sum sufficient to reduce the said indebtedness to within the said per cent., or consign and deliver additional merchandise to the Factor sufficient to bring the indebtedness upon the account current within said limit, and upon the default of the Principal in so doing, the Factor may, at its option, terminate this agreement forthwith.

15. The Factor agrees that it will, from time to time, when requested by the Principal, take consignment of goods and merchandise from and that it will make advances on the same in sums not to exceed per cent. of the value of all such merchandise which may be consigned to it, the value of such merchandise to be determined by the cost or market value thereof, whichever is lower, and said merchandise to be inventoried whenever requested by the Factor. The Principal agrees that it will perform all such agreements entered into between the Factor and said, including among others any agreement to sell, and that no liability of any kind will attach to the Factor arising out of the consignment of said goods by, which will not promptly be met by the Principal. The Principal agrees to keep, save, hold, defend and indemnify the Factor against all actions, proceedings, claims, demands, losses, outlays, costs, damages or expenses including legal fees which the Factor may, in any wise, incur, in defending or prosecuting, settling or discontinuing any proceedings or actions or claims or otherwise in consequence of the consignment of said goods by any and the sale of such merchandise. The Principal further agrees to repay all advances made on said goods by any mills and the sale of such merchandise. The Principal further agrees to repay all advances made on said consigned goods, and further agrees that said consigned goods

shall be treated as goods purchased by the Principal under the terms of this agreement, in so far as the rights of the Factor are concerned, and that the Factor shall be entitled to the same compensation for the handling of such goods as provided for in paragraph "13," and that the Principal shall be liable for all merchandise losses in relation to said goods, as provided for in the event of purchased goods under the terms of this agreement, and that the liability of the Principal, in so far as said goods are concerned, shall be the same as its liability hereunder in the event said goods have been purchased by it. That the sales of such goods shall also be subject to all the provisions of this agreement, and that accountings shall be made for the same at the same times and upon the same terms and conditions as hereinbefore provided for goods purchased by the Principal or sold by it. It is agreed that as between the parties hereto, the Factor assumes no greater liability as to goods consigned to it by, pursuant to this agreement, than the liability assumed under the terms of this agreement, if the said goods had been purchased by the Principal, directly. Upon the sale of such goods, providing sales are made in accordance with the terms of this contract, the Factor assumes the liability for credit risks assumed by it upon the sale of goods purchased by the Principal and sold under the terms of this agreement.

16. The Factor shall have possession of the premises, or of any other premises used in connection with the business of the Principal, the lease for such premises being in the name of the Factor, and the rent, however, to be paid by or chargeable to the Principal, which shall have use of the premises necessary for the conduct of its business, except such part as is used by the representative of the Factor, the Principal agreeing to indemnify and hold harmless the Factor from any and all liability arising out of said lease; the Principal further agreeing to promptly comply with all the terms of the same, and agreeing to be liable for all expenses incurred in or about said premises of any and every nature whatsoever arising out of the occupancy of the same by the parties. The Factor shall at all times be entitled to and shall have exclusive possession of the premises aforementioned, and shall, at all times, have title to and exclu-

sive right to possession of all property therein of every name, nature and description. The Principal agrees not to do or permit to be done any act which shall in any way impair or affect the title or right to possession of the Factor in and to said property, and agrees that the Factor shall be entitled to all indicia of title to all such property. All accounts, remittances, checks, bills receivable and other choses in action of every nature representing the proceeds of sales of goods or the purchase price thereof, or otherwise, shall be the property of the Factor. The Principal agrees to indemnify and hold harmless the Factor against any liability for sales or for any claims against either the Principal or the Factor in connection with the conduct of said business, and the Factor shall, at all times, have a general lien therefor upon any and all proceeds of sale in any and all accounts, notes, drafts, bills receivable or evidence of indebtedness arising from any sales, and upon any amounts for which the Principal may be entitled to credit. The Factor shall have a general lien upon all the property of the Principal wheresoever situated of every name, nature and description for the full and faithful performance of all the terms of this agreement, including the repayment of loans, compensation, advances, charges of every kind, interest and indemnity of every nature provided for herein. The rights of the Factor hereunder and its lien shall not be affected by any devolution or transfer of the rights or interests of the Principal, whether the same be voluntary or by act of law. The Principal agrees to do all acts consistent with the protection of the Factor in its lien under the laws of the Municipal, State and Federal authorities, and agrees that it will do no act inconsistent with such lien, and that it will not suffer nor permit the doing of any act inconsistent with said lien, nor will it omit to take all steps necessary to protect said lien. [It further agrees that it will specifically comply with all the provisions of Section 45 of the Personal Property Law of the State of New York, in protecting the lien of the Factor.] The Principal agrees that in the event that it may purchase any goods which shall be held by the seller thereof after the payment of the same has been made, it will, prior to or simultaneous with said payments, notify such seller in writing that the goods have been con-

signed to and are the property of the Factor. The Principal agrees that in the event of the purchase of any goods by it and the delivery to any bailee of such goods, that it will, prior to or simultaneous with the delivery of such goods to such bailee, notify said bailee in writing that said goods are the property of and subject to the order of the Factor, with the exception, however, that such notice may be dispensed with where such bailee is a common carrier merely having custody of the goods for transportation purposes only.

17. The premises occupied by the Principal for the conduct of their business shall have a sign thereon in accordance with [Section 45 of the Personal Property Law of the State of New York,] bearing the name of the party of the Factor in accordance therewith. No sign shall be placed upon said premises without the approval of the Factor and no stationery shall be used in connection with sales, purchases and delivery of merchandise without first securing in writing the approval of the Factor as to the form and contents thereof.

18. The Principal shall deposit with the Factor, as security for the faithful performance of all the terms of this agreement, Dollars in cash, or its equivalent in accounts receivable approved as to credit by the Factor, or its equivalent in merchandise valued at cost or market price whichever is lower at the date of transfer to the Factor.

19. The Managers agree individually and as stockholders of the Principal that they will deposit with a trustee satisfactory to the Factor all the common stock of the Principal and that none of said stock shall be transferred to any one not a party to this agreement without the consent of the Factor and they further agree, together with the Principal that they will determine the sum which shall be per cent. of the net profits earned by the Principal in each and every year during the duration of this contract, and distributable as dividends to the stockholders of the Principal, and that a sum equivalent to said per cent. of the net profits earned by the Principal shall be deposited by the Principal and/or the Managers with the Factor as additional security for the faithful performance of all the terms of this agreement, but the Principal and Managers shall not be required to deposit as such

additional security accumulated profits in excess of.....
Dollars.

20. The Principal and Managers agree that the Managers will devote their whole time and attention to the conduct of the business of the Principal, and this agreement is made upon the understanding that the Managers shall give their whole time and attention to the business of the Principal, and that this agreement is therefore a personal one in so far as the parties of the Principal and Managers are concerned, and is not transferrable or assignable in whole or in part and that should any of the Managers discontinue his services for the Principal, then at the option of the Factor, this agreement may be terminated.

21. It is agreed that the Factor may transfer or assign its rights in and under this agreement to any corporation or partnership in which.....shall be the chief financial factor.

22. In the event of the death or permanent incapacity ofeither the Factor or the Principal may terminate this agreement by giving notice in writing to the other parties. The Factor shall give notice in writing to the other parties at the place of business,....., or such other place of business used by the Principal, and the Principal and Managers shall give notice to the Factor at....., or such other place of business which it may occupy..... months after the giving of such notice, this agreement shall be terminated and the Factor shall be paid.

23. Upon the expiration or sooner termination of this agreement, in the event that the Principal shall not have paid the Factor all indebtedness incurred hereunder, the Factor shall have the right, without further notice, to sell any or all the merchandise and all the securities of every kind, held by it under the terms of this agreement at such prices and upon such credit terms as it may deem proper and to apply the net proceeds thereof, after deducting the costs of such sale and its commissions and charges therefor as fixed in this agreement for ordinary sales to the reduction of said indebtedness and the Principal shall remain liable for any deficiency. The remedy herein conferred is not exclusive and the Factor may resort in

addition to any and all remedies which may be open to it under the laws and statutes of the State or Federal authorities.

24. It is agreed that upon the insolvency of the Principal, this agreement shall terminate at the option of the Factor and that the Factor shall be entitled thereupon to all moneys due it under the terms of this agreement and shall be further entitled to forthwith collect such moneys out of the merchandise transferred to it as security under the terms of this agreement.

25. In the event of any dispute arising under this contract, or in the event of any dispute arising as to the construction of this contract, it is agreed by all the parties hereto that the chairman of the Board of Arbitration of the Chamber of Commerce shall designate and appoint three arbitrators whose decision and judgment shall be final and binding upon the parties hereto. This agreement shall begin as of, and shall continue to and including, and thereafter shall be deemed renewed and continued from year to year upon the same terms unless any of the parties shall, at least months before the termination of this agreement, or any renewal thereof, give notice in writing to the other party that it desires to terminate this agreement at the expiration of such agreement or renewal thereof. Upon the final termination of this agreement or any such renewal, the Principal agrees to pay to the Factor the additional compensation of per cent. on the value of the merchandise, said value to be determined as in paragraph "13." No commission shall be charged on contracts of sale on which no outlay has been incurred by the Factor.

26. A waiver of any breach of any of the terms or provisions hereof in any instance on the part of the Factor hereof, shall be deemed a waiver for said instance alone and for no other. All notices required hereunder shall be given as the notices provided for in Paragraph "22."

Factor's Agreement—Another Form

AGREEMENT made the.....day of....., betweenand....., hereinafter called the "Factors," and....., hereinafter called the "Customer," WITNESSETH:

WHEREAS, the Customer is engaged in the business of buying, selling and dealing in....., and has requested the Factors to act as the Customer's Factors and commission merchants on the terms hereinafter set forth, and the Factors have consented to do so.

NOW, THEREFORE, in consideration of the premises, and of the mutual covenants hereinafter contained, the parties hereto hereby agree as follows:

1. The Customer hereby appoints the Factors the sole factors and commission merchants of the Customer. The Customer agrees that its business shall be conducted solely upon the premises now occupied by it at..... or at such other place or places as may from time to time be mutually agreed upon. Said premises shall be deemed to be the premises of both the Customer and of the Factors and shall be under the control and supervision of the Factors. A sign shall be placed and maintained at all times during the term of this agreement conspicuously at the entrance to said premises, on which the following shall be printed in legible English: The rent and all other expenses of maintaining said premises shall be paid by the Customer.

2. The Customer agrees to consign to the Factors at the aforesaid premises, free of all charges, all merchandise now owned, or hereafter manufactured, purchased or otherwise acquired by the Customer during the term of this agreement. Said merchandise shall remain upon said premises until sold, as hereinafter set forth, and shall be deemed to be in the possession of the Factors, and the Factors shall have, and are hereby granted a general lien thereon and on the proceeds thereof when sold, as security for all advances, commissions, interest, expenses, outlays and other charges provided for herein.

3. All merchandise shall be sold by the Customer but under

the supervision of the Factors in all respects and only upon first obtaining the consent and approval of the Factors to each and every sale thereof, and the Factors may withhold their consent for any cause they deem proper or without cause. The Factors agree to investigate the financial responsibility of persons, firms and corporations to whom the Customer contemplates selling merchandise and to furnish information and advice to the Customer, at the Customer's request, concerning the credit and financial responsibility of such persons, firms and corporations. The cost of employing clerks to investigate credits shall be borne by the Factors.

4. Immediately upon the sale and delivery of any merchandise by the Customer the account receivable resulting from such sale shall be deemed to be assigned to the Factors without further act, but the Customer shall, nevertheless, execute and deliver a further assignment thereof to the Factors in form approved by the Factors. The Customer shall deliver to the purchaser of such merchandise together with the merchandise an invoice in form approved by the Factors stating that the account receivable resulting from the sale of such merchandise has been assigned to and is payable to the Factors and all bills and statements sent to the purchaser of such merchandise shall contain a statement to the same effect.

5. The Factors agree to advance to the Customer such sums of money as the Customer may from time to time request, provided that the aggregate of all outstanding advances and other debits herein provided for does not exceed.....per cent. of the inventory value (as hereinafter defined) of merchandise of the Customer then at the premises hereinbefore mentioned and subject to the lien of the Factors, plus..... per cent. of the net face value of accounts receivable approved by and assigned to the Factors and then outstanding, and provided also that the aggregate of such advances and other debits secured by merchandise does not exceed the sum of \$..... and that the aggregate of such advances secured both by merchandise and by accounts receivable shall not exceed \$..... The inventory value of said merchandise shall be the net cost thereof to the Customer, except that on the first days of...and...of each

year an inventory shall be taken of all merchandise of the Customer, in the taking of which inventory the Factors may participate if they so desire, and at each and every inventory per cent. of the original net cost price of said merchandise shall be written off the inventory value thereof.

6. The sums received in payment for merchandise shall belong solely to the Factors, and if the Customer receives payment of same it shall hold the identical checks, money or other form of payment received in trust for the Factors and forthwith deliver the same to the Factors. The Factors are hereby authorized to endorse the Customer's name on any checks or other negotiable instruments they may receive which are payable to the Customer. Upon receiving payment of any accounts receivable the Factors shall credit the Customer's account with the amount of the payment so received, which amount shall be credited to the Customer as of ten days after receipt of such payment, said ten days being added to cover delays in the collection of checks. The Factors do not in any event guarantee the payment or collectibility of any accounts receivable, and if any account receivable is not paid when same becomes due or if the debtor owing such account becomes insolvent or makes an assignment for the benefit of creditors or if a petition in bankruptcy is filed by or against such debtor, the face amount of such account receivable, together with interest thereon, shall forthwith be paid to the Factors by the Customer. Upon receipt of such payment from the Customer, the Factors shall reassign said account receivable to the Customer, but until such payment by the Customer said account receivable shall be retained by the Factors and the Factors shall have the right to bring suit thereon, either in their name or in the name of the Customer, or take such other steps for the collection thereof as they may deem proper and may settle same for such amount and upon such terms as they deem advisable, whether such account receivable is disputed or undisputed, and the cost of bringing suit or taking other steps for the collection of such account, including attorneys' fees, shall be charged to the Customer. The Factors agree to use their best efforts to collect such accounts and also agree to use their best efforts, if requested by the Customer, to collect accounts reassigned to the

Customer, but all at the cost and expense of the Customer. All merchandise returned by the purchasers thereof shall in any event immediately be redelivered to the Factors at the premises hereinabove mentioned and shall forthwith become subject to the lien of the Factors hereinbefore described.

7. For their services hereunder the Factors shall receive from the Customer a commission of . . . per cent. of the purchase price of all merchandise sold by the Customer during the period of this agreement and shall receive the same commission on sums paid on insurance covering any of the merchandise of the Customer. The Factors shall receive interest payable monthly at the rate of per cent. per annum on the amount of the debit balance against the Customer as ascertained in the manner provided in Paragraph 8 hereof. Said interest shall be actually paid by the Customer to the Factors on the first day of each and every month for the preceding month. If, for any reason, such interest is not then paid by the Customer, the amount thereof shall be deemed to be a new advance by the Factors to the Customer and shall be charged to the Customer's account as such.

8. For the purpose of determining the amount which may from time to time be due from either party to the other, the Factors shall keep two accounts for the Customer, one to be known as the "Credit Account," and the other to be known as the "Debit Account." In the Credit Account there shall be entered (a) all sums received by the Factors in payment of accounts receivable resulting from the sale of the Customer's merchandise, and (b) any sums of money which the Customer may pay or cause to be paid to the Factors to be credited to the Customer's account. In the debit account there shall be entered the full face amount of

(a) All advances made by the Factors to the Customer,
(b) Commissions to which the Factors are entitled,
(c) Interest to which the Factors are entitled,
(d) Charges and expenses which the Customer is obligated to pay to the Factors, and outlays made by the Factors for the Customer's account.

(e) All other sums which the Customer may owe to the Factors either pursuant to the terms of this contract or other-

wise. The Factors shall at least once in six months or more frequently if the Factors shall so desire, but not oftener than once in each month, render to the Customer a copy of the Customer's account as the same stands on the books of the Factors as of the close of business on the last day of the preceding month. Each of said accounts so rendered by the Factors to the Customer shall become an account stated between the parties hereto, if not objected to in writing by the Customer within fifteen days of the rendition thereof. Whenever the Customer's account shall show a credit balance in favor of the Customer, the amount of such balance shall be paid by the Factors to the Customer on the fifteenth of the next ensuing month, if the Customer shall so demand. Whenever the Customer's account shall show a debit balance of more than per cent. of the inventory value of the merchandise subject to the Factors' lien, plus per cent. of outstanding assigned accounts or more than \$. on the security of merchandise or more than \$. in the aggregate the excess shall be paid by the Customer to the Factors on demand.

9. The Customer agrees to procure burglary, fire and sprinkler insurance on all of its merchandise for the benefit of and in companies satisfactory to the Factors and to deliver the policies to the Factors and also to procure floating insurance covering merchandise while in transit to purchasers thereof or from purchasers thereof in case of merchandise rejected or returned by such purchasers, the Factors shall be under no liability whatever for loss of or damage to the merchandise of the Customer due to any cause whatever, no matter to whose fault such damage or loss may be due. The Customer agrees to pay all the expenses of its business whatsoever and if the Factors incur any expense in connection with the Customer's business the amount thereof shall be charged to the Customer.

10. The Customer agrees that the Factors may, if they so desire, file a notice of lien as provided for by Section 45 of the Personal Property Law of the State of New York.

11. The Customer agrees:

(a) To use its best efforts to sell the merchandise consigned to the Factors at prevailing market prices to responsible pur-

chasers and to devote all of its time and attention to the business of buying and selling said merchandise

(b) Not to consign any merchandise manufactured or purchased by it to any person, firm or corporation other than the Factors and not to pledge, mortgage or create any lien whatever other than the lien of the Factors on any merchandise manufactured or purchased by it, or on any accounts receivable resulting from the sale thereof.

(c) Not to sell any merchandise except through the Factors as herein provided.

(d) Not to pledge the credit of the Factors it being distinctly agreed and understood that the Customer has no right to sell any goods or make any contract whatever on behalf of the Factors.

(e) To indemnify the Factors against and hold them harmless from any and all liability which may be imposed upon them through any act, default or omission on the part of the Customer, or any of the Customer's employees or agents, and to reimburse the Factors for any expense they may incur in defending claims preferred against them because of any such alleged act, default or omission whether such claims are valid or not.

(f) Not to enter into any contracts or send out any bills, invoices or statements except on forms approved by the Factors.

(g) To notify the Factors immediately of any merchandise consigned to the Factors, and also to notify the Factors immediately upon contracting to sell any merchandise of the terms of such contract, the name and address of the purchaser and if such contract is in writing or is evidenced by a written order, to furnish to the Factors copies of such contract or order.

(h) To give the Factors immediate notice of the return of any merchandise.

(i) To permit the Factors to examine all of the Customer's books at all reasonable business hours, as frequently as the Factors may desire, and to give the Factors all information they may desire relating to said books and to the manufacture, purchase and sale of merchandise by the Customer.

(j) To execute any and all other documents which the Fac-

tors may at any time deem advisable for their protection or for the proper carrying out of the purposes of this contract, and to pay to the Factors any and all sums the Factors may expend including attorneys' fees, in protecting their rights under this contract.

(k) Not to permit any person whom the Factors deem objectionable to come or remain on the premises occupied by the Customer.

12. Advances heretofore made by the Factors to the Customer for which the Customer gave its note to the Factors and also advances heretofore made to the Customer by, the claim for which advances have been assigned to the Factors herein, shall be deemed to have been made by the Factors to the Customer pursuant to the provisions of this agreement and shall in all respects be governed by the provisions of this agreement, and the merchandise, possession of which and a factor's lien on which has been transferred by said Executors to the Factors herein, shall continue to be held by the Factors herein, pursuant to the provisions of this agreement, as if the same had been consigned directly to the Factors herein, and said merchandise and the proceeds thereof shall be subject to the lien of the Factors herein provided for. In all other respects, the contract between the Customer herein and said dated, which contract was assigned to the Factors herein, is hereby terminated as of, except that the lien granted in and by said contract and all other rights granted to the Factors in and by said contract for the protection, security or enforcement of the Factors' right to recover advances, commissions, interest and other charges and expenses are hereby expressly preserved, and all rights of against the Customer arising out of the return of merchandise heretofore sold or the non-payment of accounts receivable now outstanding, are hereby expressly reserved.

13. This agreement shall commence as of and all business done between the parties hereto on and since such date shall be deemed to have been done under and pursuant to the terms hereof. The term of this agreement shall be for a period of one year from, and thereafter from

year to year subject to termination at the expiration of the original term of one year or of any succeeding term of one year by not less than ninety days' written notice to that effect given by either party to the other. However, if at any time the Customer becomes insolvent or makes an assignment for the benefit of creditors or if a petition in bankruptcy is filed by or against the Customer or if a receiver of its property is appointed, or if a judgment is docketed against the Customer and is not paid or vacated or discharged of record or bonded within five days of the docketing of the same, or if the Customer shall apply to its creditors generally for an extension of time of payment, or if the Customer shall breach any of the terms of this agreement, or in the event of the dissolution of the Customer, then, and in any of such events, the Factors may at their option terminate this agreement by giving written notice of the exercise of such option.

In the event of the passage of any law of the Federal Government or of any State or local Government in any way affecting this agreement or the provisions hereof, or the rights of the parties hereunder, the Factors may at their option at any time thereafter, terminate this contract upon giving ten days' written notice to the Customer of their intention to do so.

14. Immediately upon the termination of this agreement in any manner hereinbefore specified the Factors shall have the immediate right to the possession of all merchandise of the Customer and the Customer agrees forthwith to deliver same to the Factors and the Factors may enter upon any premises where any of such merchandise is kept and remove same by force or otherwise, with or without legal proceedings, without being liable to any prosecution therefor. Upon the termination of this agreement in any manner hereinbefore specified, all sums theretofore advanced by the Factors and all commissions, interest, charges and expenses shall immediately become due and payable and the Customer agrees forthwith to pay to the Factors the amount of the debit balance against the Customer, if any, ascertained as provided in paragraph "8" hereof, and in addition shall pay to the Factors a transfer commission of per cent. of the purchase price of the merchandise contracted for in all unfilled contracts or orders of the Customer

and also per cent. of the original cost of all merchandise then in the possession of the Factors not included in said contracts and orders. Upon receiving payment of said debit balance and transfer commission, and upon being adequately secured against any and all debits which might thereafter be chargeable to the Customer, the Factors shall re-deliver all of said merchandise to the Customer, free of their lien thereon. If the Customer shall fail to pay such debit balance and transfer commission within ten days of the termination of this agreement, the Factors may, in addition to other rights they may have by law or by this agreement, proceed to sell any or all of the merchandise of the Customer at either private or public sale or sales, with or without notice to the Customer, and if sold at public sale, the Factors may themselves become the purchasers thereof, and the proceeds of such sale or sales shall be applied by the Factors to the expenses of such sale or sales and such other expenses, including attorneys' fees, as they may be put to in connection with the same, and to the amount of the aforesaid debit balance and transfer commission, and the surplus, if any, shall be paid to the Customer, and if there shall be any deficiency, the Customer shall pay the same forthwith to the Factors. The Factors, however, shall be under no obligation to sell said merchandise, but may proceed directly against the Customer to recover the full amount of said debit balance and transfer commission.

15. Any notice provided for herein shall be sufficiently given if sent by registered mail to the principal place of business of the respective parties hereto within the State of New York.

16. This agreement may be assigned by either of the Factors to the other, or by the Factors to any partnership in which either of the Factors is a member, or to a corporation in which either of the Factors alone or both together own a majority of the voting stock; but except as thus provided neither party hereto shall assign this contract without the written consent of the other.

17. The construction and performance of this agreement shall be governed by the law of the State of

Factor's Agreement—Another Form—Principal Engaged in Selling Merchandise both on its Own Account and as Agent for Others

AGREEMENT made this.....day of....., by and between....., copartners doing business under the firm name and style of....., hereinafter called the "Factors," and....., hereinafter called the "Principal."

WHEREAS the Principal is engaged in the business of selling both on its own account and as selling agent for others; and

WHEREAS it is the desire of the parties hereto that the Factors shall act as factors in connection with the entire business of the Principal.

NOW THIS AGREEMENT WITNESSETH:

1. The Principal hereby appoints the Factors its sole and exclusive factors for the term of this agreement and COVENANTS that during said term it will transact no business excepting under and by virtue of the terms of this agreement, that it will consign to the Factors hereunder all merchandise which it may trade in for its own account during the term of this agreement and that it will not act as selling agent for any other person, firm or corporation during the term of this agreement, excepting such persons, firms or corporations as shall be approved by the Factors and who shall enter into written agreement with the Factors, constituting the Factors sole factors.

2. The Principal will consign to the Factors, during the continuance of this agreement, all merchandise manufactured or dealt in by the Principal for its own account and deliver the same, free of all liens and charges, at the Factors' place of business at....., and such merchandise shall be and become pledged to the Factors and shall remain in their possession, custody and control until sold and delivered to customers on sales approved by the Factors or until released from pledge as herein provided. The Factors shall permit the Principal and its agents and servants to have access to the said merchandise for the purpose of offering the same for sale subject to the terms of this agreement, and the Factors shall

not be responsible for any loss, damage, destruction, theft or shortage of said merchandise excepting such damage as shall arise from the act or omission of the Factors, their agents or servants. The Factors will permit the Principal, during the term of this agreement, to have such occupancy of said premises as shall be necessary for the purpose of exhibiting and negotiating the sale of the merchandise subject to the provisions of this agreement. This permission shall not be deemed to be a lease and the said premises shall at all times be in the complete custody, possession and control of the Factors, who shall have the right to place their own custodian in charge at all times. The Principal will indemnify the Factors against any loss or liability by reason of any loss, theft, damage or destruction of merchandise consigned to the Factors either by the Principal or by its principals, excepting such loss, theft, damage or destruction as may be occasioned by the act or omission of the Factors or their agents, servants or employees.

3. The Principal shall act as selling agent for..... and shall be bound by and comply with the provisions of the agreement between the Factors and.....dated simultaneously herewith. The Principal shall keep separate and apart merchandise consigned to the Factors by..... and merchandise consigned to the Factors by any other person, firm or corporation for whom the Principal shall act as selling agent and merchandise consigned to the Factors by the Principal and shall do nothing to mingle the merchandise consigned by different consignors. The Factors will deliver to the Principal a copy of all account sales rendered by the Factors to any and all consignors for whom the Principal shall act as selling agent pursuant to the terms of this agreement at the same time that the account sales is sent by the Factors to said consignors.

4. The Principal shall be bound by and comply with any agreements hereafter made between the Factors and any other person, firm or corporation for whom the Principal shall act as selling agent pursuant to the terms of this agreement where such agreements have been approved in writing by the Principal, and the Principal hereby expressly approves the agree-

ment between the Factors and the said.....dated simultaneously herewith.

5. As to the business of the parties in connection with merchandise manufactured by or dealt in by the Principal for its own account, the parties MUTUALLY COVENANT:

a. No merchandise shall be sold without the express consent of the Factors, except as herein expressly provided. If, however, the Factors shall refuse to approve any sale, when requested so to do by the Principal, the Principal shall have the right to make such sale at such prices and upon such terms as it may fix, upon the express condition precedent that before making such sale it pay to the Factors in cash to the extent of the existing indebtedness to the Factors the value of the merchandise so to be sold, such value to be the same as that used as the basis in estimating the advances made by the Factors. Upon such sales so made without the approval of the Factors, the Principal will pay to the Factors a commission of.....per cent. upon the net amount of such sales, deducting trade but not time discounts, and the Factors shall have no responsibility for the payment of the accounts receivable arising out of such sales and do not assume the *del credere* thereof. Immediately upon the sale of any merchandise the account receivable therefor shall become the Factors' property and such accounts receivable are hereby assigned and transferred to the Factors. All merchandise sold shall be billed and invoiced upon forms of bill or invoice satisfactory to the Factors, and unless otherwise stated by them said bills and invoices shall read "Bought of....." and shall bear the words "This bill is assigned and payable to....." (with their address) signed.....and such signature, whether printed, stamped or written, shall be deemed the valid signature of and the said endorsement on said bills shall operate as a valid confirmatory assignment thereof to the Factors by the Principal. The Principal will also execute any form of further assignment which the Factors may request.

b. The Factors hereby guarantee the payment of all accounts arising from the sale of said merchandise approved by them, provided the merchandise so sold is finally accepted by

the respective purchasers thereof without dispute, and agree to render account sales monthly within fifteen days after the end of each calendar month, of the sales charged to customers during the said calendar month. The present worth of the accounts receivable shown in such account sales shall be figured at the rate of per cent. per annum as of their average due date, adding days for slow collections, out of town checks and other items of expense, on the net amount of such sales, after deducting discounts allowed to purchasers and such present worth shall be passed to the credit of the Principal as of the last day of the calendar month. The sales referred to in subdivision a hereof, which are not guaranteed by the Factors, however, shall not be included in the account sales but shall be passed to the credit of the Principal when actually collected by the Factors. The Factors shall have no responsibility for claims by customers for shortages or loss of merchandise, differences in terms, freight, expressage, imperfections, delay, breach of warranty, rejection of merchandise or for any merchandise disputes. Should any purchaser reject said merchandise or refuse to pay the full purchase price thereof upon any such claim, the amount credited by the Factors to the Principal thereon, together with interest from the date of such credit, may be charged back to the Principal by the Factors, but the Factors shall have the right to retain the account receivable as security hereunder, and any merchandise returned by the customer shall be deemed merchandise consigned to the Factors hereunder. The Factors will credit the Principal with the amount of commissions it has theretofore charged the Principal on the amounts so charged back to the Principal.

c. The Factors shall, upon request, from time to time, lend and advance to the Principal per cent. of the market value of the merchandise consigned to them by the Principal, less trade discount and per cent. Where the net market value is not established by actual sales, any difference between the Factors and the Principal as to market value is to be determined by arbitration in the manner specified in Paragraph 17 of this agreement. Where goods have remained in stock for one year, the market value of such goods

for the purpose of estimating advances shall be determined byand the Factors shall not be required to have advanced thereon more than.....per cent. of the net market value thereof as so determined. The Factors shall at no time be required to have outstanding advances exceeding \$..... The advances which the Factors shall be required to make shall in all cases be subject both to the limit of absolute amount hereinbefore set forth and also to the limit of percentages of collateral hereinbefore set forth. If the market price of consigned merchandise shall at any time depreciate so that the amount of advances exceeds the said percentages, then the Factors shall have the right to demand the consignment of additional merchandise, or the payment of cash sufficient to reduce the advances to within said percentages, and if the Principal should fail within.....days so to reduce them, then the Factors shall have the right to terminate this agreement. The Factors shall have a general lien on all merchandise consigned to them and the proceeds thereof for all advances, charges and commissions hereunder.

d. Accounts current shall be rendered semi-annually and interest at the rate of.....per cent. per annum shall be charged and credited thereon. Unless an account current is objected to in writing within.....days from its receipt, it shall be deemed an account stated.

6. No signs shall be placed upon said premises without the Factors' express written consent and unless otherwise stipulated by the Factors, the only signs placed thereon shall read, factors for, or and....., factors for (here to follow the full names of such other persons, firms or corporations for whom the Principal shall act as selling agents pursuant to the terms of this agreement).

7. Any custody of merchandise consigned by the Principal or by any of its principals which the Factors may exercise shall be solely on behalf of the Principal.

8. The Principal shall pay all expenses of every kind in and about the selling and delivery of merchandise consigned to the Factors by it and by any of its principals. It shall at its own expense cover all such merchandise with insurance against loss

by fire in companies and to amounts and under forms of policy satisfactory to the Factors, loss thereon to be payable to the Factors as their interest may appear, and shall also at its own expense cover all such merchandise with insurance against burglary and theft to the amount of \$. in companies satisfactory to the Factors with loss thereon payable to the Factors as interest may appear. If the Principal shall at any time fail to take out and pay for any of said policies upon request of the Factors, the Factors shall have the right to take out and pay for such policies and charge the Principal with the premiums thereon. The Factors shall not be responsible for any loss by fire except to account for the proceeds of such policies.

9. In the event that in the opinion of the Principal the credit of any customer shall become impaired after the approval of an order by the Factors but before the delivery of the merchandise, the Principal shall be entitled to stop the delivery of such merchandise without liability to them.

10. Where merchandise is returned by customers for any reason whatever, it shall be and become at once subject to the factors' lien and such return shall be reported to the Factors immediately, and at all events by the Tuesday following the return, unless such Tuesday be a holiday and in that event on the Wednesday following such return. In no event shall the Principal return to any consignor any merchandise which has once been consigned to the Factors except with the express written permission of the Factors.

11. In the event that the Principal shall be adjudicated a bankrupt or shall file a petition in bankruptcy or shall make a general assignment for the benefit of creditors or shall have a receiver appointed voluntarily, then in either of such events the Factors may, at their option, terminate the agreement, and the rights of the parties as to payment of moneys due to the Principal, collection of accounts, sales of merchandise or other collateral shall be governed by the provisions of this agreement.

12. For their services hereunder the Factors shall be entitled to receive from the Principal and the Principal shall pay the sum of \$. each month, and in addition thereto,

commissions on all sales made by the Principal both for its own account and as selling agent for any principal during the term of this agreement as follows:

.....per cent. on the net amount of all sales up to \$.....made during each year of the term of this agreement;per cent. on the net amount of sales exceeding \$.....and up to \$.....during each such year; and.....per cent. on the net amount of sales exceeding this amount in any such year. All commissions shall be figured upon the amount of the bills to customers, deducting trade but not time discounts and shall be payable at the end of each month in which the goods are charged to the customer, value as of the middle of such month. In figuring said amounts of sales, however, there shall not be included such sales as are made without the *del credere* of the Factors pursuant to Paragraph 5 a, of this agreement, and upon such sales the Factors shall be entitled to receive the commission of.....per cent. as hereinbefore set forth, nor shall there be included sales of.....where the merchandise has not been advanced upon by the Factors or consigned to them and upon sales of such.....the Factors shall be entitled to a commission of.....per cent. if the..... are sold at cost or above and to no commission if they are sold below cost, but the Factors' guarantee as hereinbefore set forth shall not apply to any such sales of..... Where the contract between the Principal and the consignor for whom the Principal acts as selling agent provides as does the said contract with the.....for the debit by the Principal to the said consignor of an entire amount of commission to cover the compensation both of the Principal and the Factors, the compensation which the Factors are to receive shall none the less be governed by the terms of this agreement and the said commissions shall be adjusted as between the Principal and the Factors in accordance with the terms of this agreement. Nothing herein contained, however, shall be deemed to obligate the Principal to pay any commissions whatever to the Factors on behalf of such consignors excepting to the extent that the Principal shall have actually received said commissions for the Factors' account from such consignors.

13. At the end or sooner termination of this agreement the Principal covenants to pay to the Factors, within days thereafter, all advances, charges and commissions with interest thereon due to the Factors hereunder, and in the event that such indebtedness is not so paid, then at the expiration of said days from the said end or sooner termination of this agreement, the Factors shall have the right to sell the merchandise consigned to it at public or private sale without further notice and for cash or credit and to apply the proceeds thereof after deducting the actual selling expense to the payment of the Principal's indebtedness to them. Where any such sale is made on credit, however, the Factors guarantee the payment thereof in the manner and subject to the exceptions and limitations set forth in this agreement as affecting sales made under the agreement, and on such sales the Factors shall be entitled to charge and receive the same commissions to which they would be entitled for sales made under the agreement. When the proceeds of such sales have reached an amount sufficient to pay the Factors their advances, interest, charges and commissions hereunder, no further sales shall be made by the Factors. The remedy herein conferred is not intended to be exclusive, and the Factors may resort, in addition thereto or in lieu thereof, to any legal remedy for the enforcement of their rights. The Factors shall also have the right upon the termination of this agreement to retain a reasonable sum of money or a reasonable amount of merchandise in their hands for a period of days after the last sales are made to indemnify them against any claims of purchasers of an offset or counterclaim or right to reject merchandise upon sales theretofore credited by the Factors to the account of the Principal unless otherwise indemnified by the Principal against such claims in a manner satisfactory to the Factors.

14. If this contract shall terminate by reason of any breach thereof on the part of the Principal, or by reason of the bankruptcy, assignment or receivership proceedings of the Principal as set forth in Paragraph 11 hereof, or, if at the termination thereof the Factors shall be willing to extend the term of this agreement but the Principal shall be unwilling so to do, but

not otherwise, the Factors shall be entitled to charge and receive from the Principal a transfer commission of per cent. on the amount of merchandise on hand at the time of said termination and consigned to the Factors.

15. The term of this agreement shall begin on the day of, at which time all the existing transactions between the Factors and the Principal shall be deemed to be subject to the terms of this agreement and all merchandise at that time consigned to the Factors and all sums due either to or from either of the parties to the other shall be and become subject to the terms of this agreement. The term of this agreement shall expire on the day of If at any time, however, during the term of this agreement the contract entered into simultaneously herewith between the Principal and should terminate pursuant to any of the terms of said agreement, then and in that event the Factors shall have the option to terminate this agreement.

16. At the end or sooner termination of this agreement and notwithstanding that it shall determine in all other respects it shall continue in force in the following respect: The Factors covenant that they will permit the Principal to continue to have such occupancy of and access to that portion of the premises, which is demised to the Factors by lease dated between themselves as tenants and as landlord for the term demised in said lease, the said occupancy on the part of the Principal to be of the same character and subject to the same limitations hereinbefore set forth as affecting the Principal's rights to access or occupancy during the term of this agreement, and the Principal covenants that it will pay to the Factors monthly on the first day of each and every month during the balance of said term, namely:, the sum of \$. on the 1st day of each month up to, etc. In the event that the Principal should be in default for a period of days in making any one of said payments, then the Factors shall be relieved of their obligations under this paragraph and the Principal shall be liable to the Factors for any loss that the Factors may sustain upon re-letting, sub-letting or assigning the balance of the term of the said lease.

If requested so to do by the Factors, the Principal will sign a sub-lease from the Factors of the said premises upon a form of lease identical with the form of lease from the said to the Factors and at the same rental for the balance of the said term and beginning on such day as the Factors shall specify.

The Factors shall during the term of this agreement be entitled to deduct the sum of \$. in each and every year in semi-annual payments on or about the day of and the day of in each year beginning from sums otherwise payable hereunder to the Principal. The said moneys shall draw interest at per annum, and be held by the Factors as collateral security for the faithful performance by the Principal of its obligations hereinbefore set forth in Paragraph 12 hereof to pay the sum of \$. each month and also as collateral security for the faithful performance of all of the covenants on the part of the Principal specified in this Paragraph 16 and also of all of the covenants and conditions contained in said sub-lease if made, and also as collateral to indemnify the Factors against all loss for which the Principal is liable under the provisions of this Paragraph 16.

17. If, at any time while this contract is in force, or at any time thereafter, any dispute, difference or question shall arise between the parties hereto touching any matters whatsoever herein contained, then every such dispute or question shall be referred to the arbitration of two disinterested merchants, one to be chosen by each of the parties to the dispute, and if the parties so chosen cannot determine such dispute or question, they will select a third person to decide, and his decision shall be binding upon the parties hereto. A bona fide attempt at such arbitration shall be a condition precedent to any action at law to be taken by either of the parties hereto.

Deed of Trust—Agreement Between Debtor and Creditors for Management of Business by Trustees

AGREEMENT made this day of.....by and between....., of....., hereinafter referred to as "the Debtors,"....., hereinafter referred to as the "Trustees,"..... and the undersigned creditors of said debtors, hereinafter referred to as "the Creditors" WITNESSETH:

WHEREAS, the said Debtors are indebted to numerous creditors whose obligations are now matured, and presently to mature, and are unable to pay because of the present condition of the.....market.

Now, THEREFORE, the Debtors, in consideration of the premises, and of the sum of One dollar, to them paid by the Trustees, upon the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and of the mutual promises and agreements hereinafter contained, have granted, bargained, sold, assigned, transferred and set over, and by these presents do grant, bargain, sell, assign, transfer and set over unto the Trustees, their successors and assigns, all and singular the goods, chattels, stock, notes, claims, demands, property, real, personal or mixed, and effects, of every description, and wheresoever located, including money, merchandise manufactured, unmanufactured and in process.

To HAVE AND TO HOLD the same, and every part thereof, unto the said trustees, their successors and assigns.

IN TRUST, NEVERTHELESS, to receive and take possession thereof, and in their discretion to carry on the business of the Debtors for such period of time as, in their discretion, they may deem for the best interests of the Creditors, and to sell and liquidate the aforementioned assets of said Debtors, and to convert the same into money, on such terms and at such prices, as in their judgment they see fit, and proper, and to collect all debts and demands hereby assigned, as may be collectible, and out of the proceeds of such sales and collections.

1. To pay and discharge all the just and reasonable expenses, costs and charges of executing this agreement and carrying into

effect the trust hereby created, including counsel fees to the attorneys for the Trustees, and for the Creditors' committee, in connection with the preparation and execution of this trust, and then to pay and discharge in full, all debts and liabilities of the Debtors, each of which are less than \$100 in amount, and then to pay (if the residue of said proceeds is sufficient for that purpose), to the Creditors, all the debts and liabilities now due, or to grow due, from the Debtors, with interest thereon to the date of payment, and if the residue of said proceeds shall not be sufficient to pay said debts and liabilities, with interest, in full, then to apply the said residue of said proceeds to the payment of said debts and liabilities ratably and in proportion, which lesser sums shall be accepted in full discharge and satisfaction of the demands and claims of the Creditors.

2. After the payment of all the debts and liabilities of the Debtors in full, with interest, if there shall be any remainder or residue of said property or the Debtors, their legal representatives, heirs and assigns.

3. And in furtherance of the premises, the Debtors do hereby make, constitute and appoint the Trustees their true and lawful attorneys, irrevocably, with full power and authority to do all acts and things which may be necessary in the premises to the full execution of the trust hereby created, and to ask and demand, recover and receive of and from all and every person or persons, all property, debts, and demands due, owing and belonging to the said debtors, and to give acquittances and discharges for the same; to sue, prosecute, defend and implead for the same; and execute, acknowledge and deliver all necessary instruments in connection therewith; and the Trustees are hereby vested with full power, authority and right by the Debtors, and are authorized to sign the name of the debtors to any check, draft, promissory note or other instrument, in writing, which is payable to the order of the Debtors or to sign the name of the Debtors to any instrument in writing, whenever it shall be necessary so to do to carry into effect the object, design and purpose of this trust.

4. The Trustees shall have the right to hear and determine any and all claims and demands made by any parties with reference to transactions had by them with the Debtors, and

shall have the right to compromise, arbitrate, and adjust any and all such claims in such manner as the Trustees may deem for the best interests of Creditors, and the Trustees shall have the further right, provided in their opinion the best interests of Creditors will be served thereby, to purchase or anticipate the claims of Creditors of said Debtors; also to discharge any liens or claims to release merchandise belonging to the Debtors.

5. It is understood that the Debtors may continue in business and the Trustees shall have the right to consign or sell to said Debtors, from time to time, merchandise, manufactured, unmanufactured or in process, transferred to the Trustees under this agreement, upon such terms as to the Trustees may seem proper.

6. The Trustees shall not be liable for any loss resulting from the non-payment or non-collection of the purchase price of any merchandise sold by them, nor shall they be liable for any depreciation in any security taken by them upon the sale of merchandise, nor shall they be liable for the selection of any depositary in which a bank account may be opened, nor shall said trustees be liable for any error of judgment or mistake at law, or for anything but their own individual, willful fraud.

7. The Trustees shall not be required to give any bond for the performance of their duties.

8. The Trustees, as at any time constituted, notwithstanding any vacancy, shall have the power, rights, and interests of the Trustees as herein originally appointed. In the event that any of said Trustees shall die, resign or become otherwise disqualified from acting, the remaining Trustees may fill any vacancy, and such additional and succeeding Trustee shall have and shall exercise all the power and authority under this agreement and trust as was previously possessed by a Trustee, as originally appointed. The majority vote of the Trustees shall constitute the final determination of the Trustees upon any matter in which all of the Trustees shall not be unanimous.

9. The Trustees are authorized to employ, during the term of this agreement, the debtors for such time upon such conditions, and at such salary, as to them may seem proper.

10. The Trustees shall keep books of account showing the receipts and disbursements, which shall be open for reasonable

inspection during business hours by any of the parties to this agreement, and upon the termination of the trust, the Trustees shall, upon demand, account in writing to any of the parties to this agreement for the trust estate.

11. Nothing herein contained, in so far as a specific delegation of power to the Trustees is concerned, shall in any wise limit their general power as Trustees.

12. Each of the Creditors hereto agrees that he will not, pending the execution of this trust, institute any proceeding at law or in equity, or in bankruptcy, against the Debtors, and that he will not become a party to any proceeding in bankruptcy against said Debtors, and in the event of any proceedings by or against said Debtors being had, which will require any proofs of claim or other written instruments to be executed by or sworn to by any of the creditors, each of the creditors, for himself undertakes to execute said agreement or proof of claim, and further power of attorney as may in the opinion of the Trustees, be requisite to further carry out the spirit of this agreement.

13. The Trustees do hereby accept the trust created by this agreement, and covenant faithfully to perform the terms hereof, and comply with its provisions, and agree to act without compensation.

14. It is understood and agreed that the trust herein created shall continue until the 1st day of February, 1920, at which time all property and assets remaining in the hands and possession of the Trustees shall be disposed of at public or private sale, in such manner as the Trustees and a majority of the committee may deem proper, unless a majority of the committee shall deem it advisable to extend the trust from time to time, timely notice of which extension shall be given by mail to the Creditors.

15. Any Creditor may become a party to this agreement by signing the same or a copy, and all copies hereof shall be deemed one and the same instrument.

16. The said Debtors do hereby agree upon demand to execute from time to time such other and further instrument as a majority of the Trustees may request, and which said majority of the Trustees may be advised to be necessary and

proper to carry into effect the purposes and intent of this agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, the day and year first above written.

Agreement Between Creditors and Embarrassed Solvent Debtor Providing for Extension—Formation of Corporation Controlled by Creditors

AGREEMENT made this day of January, 1922, betweenof.....hereinafter for convenience designated as the Debtor, and all creditors of the Debtor, who shall hereafter sign this agreement, hereinafter for convenience designated as the Creditors,

WITNESSETH as follows:

WHEREAS, a careful audit of the affairs of the Debtor has been made by Messrs....., Certified Public Accountants, who were retained for that purpose by the.....,, and

WHEREAS, said audit discloses that the Debtor has assets of the estimated value of \$.....and is indebted to various creditors in various amounts aggregating about....., a considerable part of which is past due, and

WHEREAS, the Debtor, although solvent, is unable to pay such indebtedness at this time, or as it falls due, and desires an extension of time in which to pay such indebtedness in full and with legal interest.

NOW, THEREFORE, in consideration of the premises it is agreed between the parties hereto as follows:

1. As soon as creditors of the Debtor, aggregating not less than 95% of the aforesaid total indebtedness, have given their assent in writing to this agreement, the business of the Debtor shall be immediately incorporated under the laws of the State of....., and all the assets of the said Debtor, as disclosed by the aforesaid audit, shall be transferred and conveyed to the said corporation, which shall also assume all the debts and obligations of the said Debtor, as disclosed by the aforesaid audit.

2. The Creditors agree to sell to said corporation, when

organized, all claims of every kind, name and nature against the Debtor for the sum of 100% thereof, said sum to be payable as follows:—

.....% in cash to be paid within.....days after the corporation has been organized; and the balance of.....% in three equal installments of.....% each, payable.....,and..... months after said cash payment has been made, said deferred payments to be evidenced by the promissory notes of the corporation, which notes are to bear interest at the rate of 6% per annum, and are to be indorsed by the Debtor and by..... of.....

3. Pending the formation of the corporation, and pursuant to a resolution passed at a meeting of the Creditors of the Debtor which was held on....., at the....., in....., a Creditors' Committee composed of.....and.....(hereafter referred to as the Committee) were appointed. This Committee is now in control of the assets of the Debtor and is supervising the running of his business. This Committee is hereby authorized and empowered to arrange all the details in connection with the incorporation of the Debtor's business with the end in view of fully protecting the interests of Creditors. It is expressly understood and agreed that the Debtor will cause said Committee to be elected on the Board of Directors of the corporation and that the Debtor will also cause himself to be so elected and that said four shall constitute the Board of Directors of the corporation. It is also expressly understood and agreed that until the final payment has been made to Creditors, as provided herein, the entire capital stock of the corporation shall be deposited with the Committee under a voting trust agreement and that said Committee shall also hold said stock as collateral security for the faithful performance of the terms of this agreement on the part of the Debtor.

4. The said Committee or their successors, are expressly given the right, in the event of default of any of the payments provided herein, in their absolute discretion, to declare all subsequent payments payable forthwith, irrespective of any-

thing herein stated to the contrary; or the said Committee or their successors, in their absolute discretion, may waive such default or defaults, and defer (but not longer than one year), any or all of the payments due hereunder. The said Committee or their successors are also given the authority, in their absolute discretion, to anticipate any or all of the payments due hereunder in whole or in part. In the event of default, as provided herein, the Committee, or their successors, may, in their absolute discretion liquidate the affairs of the corporation in such manner as they may deem for the best interests of the creditors, either by court proceedings or otherwise, and they shall not be liable by reason thereof.

5. It is expressly agreed that the said Committee, or their successors, in whatever capacity they may be acting (whether as committeemen, officers, directors, voting trustees, escrow agents or otherwise) shall not be liable or responsible for any error of judgment or mistake or act of omission or commission either on their own part or parts, or on the part or parts of any agent or attorney, or for anything save only their willful misconduct.

6. It is expressly agreed and understood that before the corporation delivers to Creditors the cash payment provided herein and the new notes, that Creditors surrender all outstanding notes on which the Debtor is liable.

7. It is expressly agreed that all expenses in connection with this extension, including a reasonable attorney's fee to the Counsel to the Creditors' Committee (which counsel is to prepare all the corporate papers, agreements, etc., necessary to carry out the purposes of this extension agreement), the expense of the audit heretofore referred to, and such actual out of pocket disbursements as the Creditors' Committee may have incurred or will hereafter incur (but no compensation to said Creditors' Committee) will be paid by the Debtor.

8. It is further agreed that creditors whose claims are not in excess of \$....., need not join in this extension, and authority is hereby given that said claims be paid in full at maturity.

9. Until all the payments have been made to creditors, as herein provided, no dividends are to be paid on any of the stock

of the corporation. After all payments have been made, as provided herein, the Committee, or their successors, are to resign forthwith as officers, directors, voting trustees, escrow agents, etc., and the entire management and control of the corporation is to become vested in the Debtor, or his designees.

10. This agreement may be executed in any number of counterparts, each of which, when executed, shall be deemed to be an original, and all of which shall constitute but one and the same agreement.

SIGNED AND SEALED the day and year first above written.

CORPORATE AGREEMENTS—STOCK TRANSACTIONS

Agreement for Consolidation of Corporations under Laws of several States

Continental Securities Company *v.* Belmont, 168 App. Div.
483, 154 N. Y. Supp. 54.

Affirmed 222 N. Y. 673, 119 N. E. 1036.

AGREEMENT made this.....day of.....by and be-
tween:

(Recitation of various parties to the agreement.)

And also by and between the Directors of each of the several
companies above named and the Directors of each of the other
of said companies.

WHEREAS:

The....., is a railroad corporation, organized and exist-
ing under the laws of the State of....., owning a steam
railroad wholly within said State. Its capital stock is.....
(\$.....) Dollars, divided into.....(.....) shares
of the par value of.....(\$....) Dollars each. The number
of Directors of said corporation is.....

(Then follow similar paragraphs covering each of the parties
to the agreement.)

AND WHEREAS the railroads of said companies form con-
tinuous or connected, but not parallel or competing, lines of
railroad with each other, and it is desired to consolidate said
companies into one corporation and to vest in and to convey to
such consolidated corporation the railroads, property and
franchises of the consolidating corporations, under and pur-
suant to the provisions of the laws of the States of (here enu-
merate States).

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

Article 1

The said (recitation of various parties to the agreement)
shall be consolidated into a single corporation upon the terms

and conditions hereinafter set forth, which are hereby agreed to and prescribed for such consolidation.

Article II

The name of said consolidated corporation shall be.....
....., and said consolidated corporation shall continue
for.....years.

Article III

The number of Directors who shall manage its affairs shall
be.....

Article IV

The names and places of residence of its Directors for the
first year are:

Article V

The officers of said consolidated corporation shall be a
President, as many Vice-Presidents as the Board of Directors
may appoint, a Treasurer, a Secretary, and such other officers
as may, from time to time, be provided for by the by-laws or
appointed by the Board of Directors.

The names and places of residence of the principal officers for
the first year are:.....

The several Departmental Officers of the consolidating
companies shall be continued, subject to the provisions of the
by-laws, as Departmental Officers of the consolidated corpora-
tion, with such changes, if any, in titles and duties as their
officers superior in ranks or the Board of Directors may deter-
mine.

The by-laws of.....now in force shall
become and shall be the by-laws of the consolidated corpora-
tion and shall be subject to amendment by the Board of Di-
rectors.

Article VI

The principal office of said consolidated corporation shall be in the City of, County of, State of

Article VII

The amount of the capital stock of said consolidated corporation shall be (\$) Dollars, divided into (.) shares of the par value of (\$) Dollars each.

. (.) shares of said stock shall, after said consolidation shall have become effective, be issued in exchange for outstanding stock of said consolidating corporations, on the several bases hereinafter set forth in Article VIII of this agreement.

The remainder of said (.) shares of capital stock of said consolidated corporation, namely (.) shares, may be issued from time to time when authorized by the Board of Directors of the consolidated corporation, with the approval of such governmental bodies as shall have authority in the premises.

Article VIII

The manner of converting the capital stock of each of said consolidating corporations into that of said consolidated corporation, and the distribution of such of the stock of said consolidated corporation as is to be issued in exchange for outstanding stock of said consolidating corporations, shall be as in this Article stated:

(a) The holders of the stock of shall be entitled to (.) shares of the stock of the consolidated corporation. Each stockholder of shall be entitled to (.) shares of the stock of the consolidated corporation for each share of the stock of the owned by him at the time said consolidation shall become effective.

(b) The stock of the.....owned by thenamely,.....(....) shares, shall be cancelled. The stock of the.....registered in the name of the Treasurer of that Company, in trust for it, namely.....(....) shares shall be cancelled. The other holders of the stock of....., owning the remainder of the issued stock thereof, such remainder being(....) shares of stock, dividends on which are guaranteed to the extent hereinbefore stated, and.....(....) shares of stock, dividends on which are not guaranteed (a total of.....shares), shall be entitled to.....(....) shares of the stock of the consolidated corporation. Each of said other stockholders of.....shall be entitled to.....(....) shares of the stock of the consolidated corporation for each share of the stock of.....owned by him at the time said consolidation shall become effective.

(Here follow "c" "d" "e" "f" "g" "h" and "i" regarding manner of converting the capital stock of each of said consolidating corporations.)

(l) Should any stockholder be entitled to a fraction of a share of stock of the consolidated corporation, a certificate of ownership thereof shall be issued to him. Such certificate shall provide that when certificates for fractions of shares of stock equal to one or more shares shall be presented and surrendered to said consolidated corporation, a certificate for a full share or shares of stock, equal in amount to the aggregate of such fractions of shares, shall be issued in place thereof; but such fractions of shares shall not be entitled to any interest or dividend, nor shall any holder thereof be entitled to vote thereon at any meeting of the stockholders.

(m) The stockholders of the.....of.....and of the.....shall also be entitled to receive from the consolidated corporation accruing dividends on the stock owned by them in said companies, at the respective rates of dividends paid thereon during the year....., to the date when said consolidation shall become effective.

(n) Until surrendered and exchanged for certificates issued

by it, the consolidated corporation shall recognize the now outstanding certificates of stock of the respective consolidating corporations (except such of said certificates as are to be cancelled as hereinbefore provided) as evidencing the rights and interests of the several holders thereof as stockholders of the consolidated corporation to the same extent and in the same manner as those rights and interests would be evidenced by certificates issued by it had such outstanding certificates been exchanged therefor.

After the consolidation shall have become effective, however, there shall be no further issue or transfer of certificates of stock of the consolidating corporations, but from time to time as such certificates are presented to the consolidated corporation they shall be cancelled and certificates of stock of the consolidated corporation shall be issued, on the several bases above set forth, in exchange therefor.

Article IX

The.....(.....) shares of the capital stock of..... owned by.....and to be cancelled as stated in Paragraph (b) of Article VIII of this agreement, are now held by....., as Trustee, in pledge under an indenture dated....., executed by.....and..... to it to secure the.....and.....s'.....Per Cent Gold Bonds,..... collateral (hereinafter called..... collateral bonds), to an amount not exceeding \$....., of which there have been issued and are now outstanding \$..... and no additional amount thereof is to be issued. In Section... of Article... of said indenture there is the following provision:.....

The holders of..... per cent in amount of said..... collateral bonds have given their approval to the consolidation of.....and..... and.....and..... upon the terms of this agreement. In compliance with the provisions above quoted therefrom, the said indenture executed by

..... and to the.....
, as Trustee, dated....., securing said.....
collateral bonds to the amount of
 \$....., is hereby made and declared to be a lien upon the
 property of..... and so consoli-
 dated with..... and
 and with the other companies parties hereto. In further evi-
 dence of the lien and security hereby created, there shall be
 executed by the consolidated corporation formed under this
 agreement to such Trustee or Trustees as the Board of Direct-
 ors of the consolidated corporation may name, a mortgage
 securing, by prior lien thereunder, said.....
 collateral bonds to the amount of \$.....; the property to
 be described in and included under said mortgage to be the
 same property as is described in and included under the mort-
 gage executed by.....and.....
 to the.....and.....as Trustees, dated
, securing its.....per cent (first mortgage) gold
 bonds, except that said mortgage shall be a lien upon the
instead of upon the leasehold interest of
and.....therein. The mortgage
 so to be executed shall secure, by secondary lien thereunder,
 not to exceed \$.....of.....'sper
 cent. (description of bonds), to be issued, par for par, to pay
 and refund said.....collateral bonds. The total
 amount of said.....collateral bonds and of said
per cent (description of bonds) outstanding and
 secured by said mortgage so to be executed shall not together
 at any time exceed \$..... The lien of the mortgage
 securing said.....collateral bonds and said.....
(description of bonds) on the property included there-
 under shall immediately follow the lien of a mortgage securing
 the.....and.....'s (description of
 bonds) together aggregating \$.....

 Holders of said.....
 collateral bonds for which consents to the consolidation of
 shall have been given and accepted
 by the not exceeding in the aggregate
 (\$.....) dollars, par value, shall

have the right at any time following this consolidation, to have issued to them by the consolidated corporation, in payment and refunding of their bonds for which consents shall have been so given and accepted and upon surrender of such bonds to the consolidated corporation for cancellation, the
and(description of bonds)
 for a principal sum equal to the principal sum of the bonds so surrendered. The remainder of said (description of bonds) hereafter, at the election of the consolidated corporation and with the approval of such governmental bodies as shall then have authority in the premises, may be issued to pay and refund said col-
 lateral bonds the holders of which shall not have consented to this consolidation.

Article X

The first election of Directors, after the consolidation shall have been effected, shall be held at the principal office of the consolidated corporation at such time, not more than six months after the consolidation has been sanctioned by the stockholders of the consolidating corporations as the Board of Directors of the consolidated corporation may determine, and notice of the time fixed for such first election of Directors shall be given in the same way as notice is required to be given of the annual meeting of the stockholders for the election of Directors. Anything herein contained to the contrary notwithstanding, the Directors so to be elected at said first election of Directors shall hold office until the first annual meeting of the stockholders or until their successors are chosen and qualify.

There shall be an annual meeting of the stockholders of said consolidated corporation held on the
 in in each year, at its principal office, at which Directors of said consolidated corporation for the ensuing year shall be elected by a majority vote of the stock voted; but the date of such annual meeting may be changed by the by-laws. The Directors so elected shall continue in office until others are chosen and qualify in their places. Vacancies in

the Board of Directors may be filled by the Directors in such manner as the by-laws may provide.

The President shall be chosen by ballot of the Directors, and Vice-President, a Treasurer and a Secretary shall be appointed by the Board at the first or any subsequent meeting of the Board after the annual election; and vacancies in office shall be filled by the Board. The Directors of said consolidated corporation from time to time may appoint such other officers as they may deem necessary, who shall hold their respective offices during the pleasure of the Board.

Article XI

To the extent permitted by law, said consolidated corporation shall have authority to purchase, acquire, hold and dispose of the stocks, bonds, notes and other evidences of indebtedness of any corporation, domestic or foreign, and to issue, in exchange therefor, its stocks, bonds, notes and other obligations.

Article XII

The consolidating corporations, parties hereto, hereby severally sell, assign, transfer and convey to the consolidated corporation formed pursuant to this agreement, their respective railroads together with all the rights, powers, privileges, franchises and other property used in connection therewith or pertaining thereto.

Upon the consummation of this consolidation, as provided by law, all and singular the rights, privileges, exemptions, franchises, property (real, personal and mixed), licenses, easements and interests of every kind, nature and description belonging to or in any way appertaining to said consolidating corporations, and each of them, shall be vested in and be the property of said consolidated corporation, and it shall succeed to and there shall attach to it all of the debts, obligations, contracts, tariffs, and any and all liabilities of each of the consolidating corporations.

The foregoing shall not be deemed to exclude any other effects, rights or privileges provided by law as incident to or

resulting from any such consolidation and not herein specifically mentioned.

IN WITNESS WHEREOF, each of said consolidating corporations has caused these presents to be signed by its President or Vice-President and its corporate seal to be hereunto affixed, and the Directors of said consolidating corporations have hereunto set their hands, this day of nineteen hundred and

Agreement Creating Trust of Stock of Equitable Life Assurance Society of United States

AN AGREEMENT, made in the City of New York, in the State of New York, this fifteenth day of June, one thousand nine hundred and five, between THOMAS F. RYAN, of the first part, and GROVER CLEVELAND, MORGAN J. O'BRIEN and GEORGE WESTINGHOUSE (hereinafter called the "Trustees,") of the second part.

WHEREAS, the Equitable Life Assurance Society of the United States (Hereinafter called the "Society"), is a corporation of the State of New York, having a full paid capital stock of one thousand (1,000) shares of the par value of one hundred dollars (\$100) each, of which five hundred and two (502) shares are held by the party of the first part; and

WHEREAS, the corporate powers of the Society are vested by its charter in a Board of Directors consisting of fifty-two (52) persons, divided into four (4) classes of thirteen (13) directors each, each class serving for a term of four (4) years, so that thirteen (13) directors are selected at each annual election of the Society, and

WHEREAS, the directors of the Society have adopted a plan for the mutualization of the Society by so amending its charter that, of the fifty-two (52) directors of the Society, twenty-eight (28) should be elected by the policy-holders and twenty-four (24) by the stockholders; and

WHEREAS, the consummation of said plan of mutualization and formal action thereon by the Superintendent of Insurance of the State of New York have hitherto been prevented by litigation, and in order to effect, so far as practicable, and

without further delay, the result sought to be attained by such plan of mutualization, the party of the first part has entered into this Agreement with the Trustees;

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

First: The party of the first part hereby transfers to the Trustees said five hundred and two (502) shares of the capital stock of the Society for the purpose of vesting in the Trustees the right to vote thereon for the term and upon the terms and conditions stated in this agreement. The existing certificates for said stock shall be surrendered and cancelled, and certificates therefor shall be issued to the Trustees, in which certificates it shall appear that the same are issued pursuant to this Agreement, and that fact shall also be noted in the entry of the Trustees as owners of such stock in the proper books of the Society.

Second: The Trustees are exclusively authorized to exercise the voting power on the stock held under this Agreement for the election of directors of the Society, and shall, at every annual election of directors of the Society, so vote on said stock, that out of every thirteen (13) persons for whom such vote shall be cast seven (7) shall be selected in accordance with the wishes of the policy-holders of the Society, expressed as hereinafter provided, and the remaining six (6) directors shall be selected by the Trustees in their uncontrolled discretion, to the end that, of the entire fifty-two (52) directors, twenty-eight (28) shall be policy-holders of the Society, selected by, or on behalf of, the policy-holders and twenty-four (24) shall be lawfully eligible persons selected by the Trustees in their sole discretion.

The wishes of the policy-holders in respect of the directors to be voted for by the Trustees shall be expressed in the following manner: In each year, at any time prior to the first day of November, any holder of any policy which shall have been in force for one year or more, may send to the Trustees at the Equitable Building, No. 120 Broadway, New York City, a written request, designating policy-holders of the Society to the number of not more than seven-thirteenths of the number of directors to be elected at the next ensuing election of directors for whose election as directors such policy-

holder desires the Trustees to vote at such annual election of directors, or requesting the Trustees to exercise their discretion on his behalf in the selection of policy-holders to act as such directors.

Third: The Trustees are authorized, in respect of said stock, to take, in their discretion, by vote thereon or otherwise, any action necessary or proper to effect the consummation of said plan for the mutualization of the Society, by securing to the policy-holders the right to elect directly twenty-eight (28) of the fifty-two (52) directors of the Society, or a like proportion of the entire number of directors of which the Board of Directors shall from time to time consist.

Fourth: In case said plan of mutualization shall become operative and the policy-holders shall become entitled to vote directly for twenty-eight (28) directors of the Society out of an aggregate number of which the Board of Directors may from time to time consist, then the Trustees, in respect of the stock held under this agreement, shall continue to vote for such lawfully eligible persons to the remaining directors as they shall, in their uncontrolled discretion select.

Fifth: In case of vacancies in the Board of Directors, due to resignation, death or other cause, the Trustees may make recommendations to the Directors of the Society as to the persons to be elected to fill such vacancies to the end that the purposes of this agreement may be promptly and effectually accomplished.

Sixth: No vote shall be cast upon said stock for any purpose except with the unanimous approval of the Trustees, but the Trustees may empower any one of their number actually to cast their vote.

Seventh: Any Trustee may at any time resign by delivering to the other Trustees his resignation in writing. In case of the death or resignation of any Trustee, the vacancy shall forthwith be filled by an appointment made in writing by the remaining Trustees. The term "Trustees" whenever used herein shall include the parties of the second part, and their successors so appointed.

Eighth: The party of the first part shall be entitled to dividends on the stock deposited by him under this agreement.

Ninth: This agreement shall continue in force for the full period authorized by Section 20 of the General Corporation Law of the State of New York, viz., five (5) years from the date hereof. It shall be continued thereafter so long as the Trustees shall deem advisable, and the party of the first part hereby agrees that, upon the expiration of any period of five (5) years, he will, upon the request of the Trustees, execute an instrument continuing, for a further period of five (5) years, this agreement and the powers of the Trustees hereunder, including said power to require an extension hereof. This Agreement may, however, be terminated by the Trustees in their discretion whenever in their opinion its purposes have been accomplished, or for any reason its termination is, in their opinion, advisable.

Tenth: Every other stockholder of the Society may transfer his stock to the Trustees, to be held subject to the provisions of this Agreement, and thereupon may participate in the terms, conditions and privileges thereof.

In witness whereof, the parties hereto have set their hands unto five originals hereof the day and year first above written
In presence of

ELIHU ROOT,
PAUL D. CRAVATH,

THOMAS F. RYAN,
GROVER CLEVELAND,
MORGAN J. O'BRIEN,
GEORGE WESTINGHOUSE.

Voting Trust Agreement

AGREEMENT made.....between....., a corporation organized and existing under the laws of....., and any other stockholders of.....who shall become parties to this agreement by signing the same, herein after called the "Stockholders," and....., hereinafter called the "Voting Trustee," and....., hereinafter called the "Depositary."

WHEREAS, the Stockholders deem it to their interest to act together concerning the management of the....., a corporation organized and existing under the laws of....., of which they are respectively stockholders, and to that end to unite the voting power held by them as such stockholders, and to place the same in the hands of the Voting Trustee as hereinafter provided,

Now, this agreement, made in consideration of the premises and of the mutual covenants herein contained, WITNESSETH:

1. Each of the Stockholders holding shares of the capital stock of the.....corporation, to the number set opposite his, her or its name as hereunto subscribed, respectively, hereby severally agrees to deposit the same and the certificates therefor, with sufficient transfers thereof in favor of the Voting Trustee, with the Depositary, and to receive in exchange therefor the certificates hereinafter referred to, which deposit shall continue for a period of.....years from the date of this agreement, that is to say, until....., and upon the making of such deposit all shares represented by the stock certificates so deposited shall be transferred upon the books of said.....Corporation to the name of said Voting Trustee. The Depositary is hereby fully authorized, empowered and directed to cause such transfers to be made, and also to cause any further transfers of said shares to be made which may become necessary through the occurrence of any change of the persons holding the office of Voting Trustee, as hereinafter provided, and the Depositary agrees to have all

such transfers made, provided the "Stockholders" furnish the Depositary all certificates and proof of ownership required byCorporation or its transfer agent. And during the said period of.....years the Voting Trustee shall possess and be entitled to exercise all rights of every name and nature, including the right to vote in respect of any and all such shares deposited; it being however understood that the holders of the trust certificates to be issued by the Voting Trustee shall be entitled to receive immediate payment by the Trustee to them of dividends, if any, collected by said Voting Trustee upon shares standing in their names. Whenever dividends are declared upon any of such stock payable on a day certain to stockholders of record on an earlier day, the holders of the trust certificates issued by the Voting Trustee on the earlier day, shall be entitled to receive the payment of the dividends, as if they had been stockholders of record on that earlier day, and no transfer of a certificate after such earlier day shall carry with it the right to the receipt of any dividend, unless the parties to such transfer shall otherwise instruct the Voting Trustee in writing. The holders of trust certificates issued hereunder shall severally be liable to the Voting Trustee proportionately for any expense to which he may necessarily be put by reason of the trusteeship hereby created.

2. The Voting Trustee hereby promises and agrees with the Stockholders and with every holder of certificates issued as hereinafter provided, that from time to time, upon request, he will cause to be issued to the several stockholders in respect of all stock deposited by them, certificates to an aggregate amount equal to the amount of all stock so deposited, and which certificates shall be in substantially the form hereto annexed and marked Schedule A, and the Voting Trustee agrees to pay to the Stockholders all dividends upon the shares for which said stockholders may hold trust certificates.

No certificate issued pursuant to this agreement shall be valid unless countersigned by the Depositary, and no such certificate shall be countersigned by the Depositary until it shall have been twice registered in books to be kept for that purpose. Such books shall each contain a record of the date of the issuance of each certificate hereunder, the number of

shares for which it is issued, and the name and address of the person to whom the certificate is issued, and shall also contain a record of the surrender of any certificate when made.

3. On, the Voting Trustee in exchange for and upon surrender of any of the trust certificates then outstanding, will, in accordance with the terms hereof, deliver proper certificates of equivalent amount of stock of the Corporation.

4. From time to time, after this agreement shall have taken effect, the Depositary may receive any additional full paid shares of the Capital stock of the Corporation, upon the terms and conditions of this agreement; and in respect of all such shares so received, the Voting Trustee will issue and deliver certificates similar to those above mentioned, entitling the holders to all the rights above specified.

5. In the event of the death of the Voting Trustee, or of his disability or resignation, a successor as Voting Trustee shall be chosen in the following manner: The Depositary shall and hereby agrees to call a meeting of all holders of certificates issued as provided hereunder, to be held at the office of the Corporation, or at the office of the Depositary, not less than fifteen days after the sending of a call therefor in writing. Such call shall be sent to each certificate holder at the address given by him to the Depositary upon the deposit of his stock, or at any later address given by him. Such meeting shall choose its own chairman and secretary and shall be otherwise conducted, so far as possible, in accordance with the by-laws of Corporation, and in accordance with usual parliamentary procedure. At such meeting each holder of a certificate issued as provided hereunder shall be entitled to one vote for each share of stock for which he holds such certificate. At such meeting a successor or successors to said trustee shall be chosen by a majority vote of the certificate holders present in person or by proxy.

The disability of said trustee shall be presumed from his failure, either in person or by proxy, to vote the stock held by him in trust at two successive meetings of stockholders, duly and regularly called according to the by-laws of the Corporation.

6. It is expressly agreed and understood that the Voting Trustee may vote or act in person or by duly authorized proxy, and the Stockholders hereby authorize and empower the Trustee so to act and vote.

7. In voting the stock held by him, the Voting Trustee will exercise his best judgment, from time to time, to select suitable directors, to the end that the affairs of the company shall be properly managed, and in voting on other matters which may come before any stockholders' meeting will exercise like judgment; but it is understood that no Voting Trustee or Depositary incur any responsibility by reason of any error of law or of any matter or thing done or omitted under this agreement except for his or its own individual malfeasance.

8. This agreement may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original; and such counterparts shall together constitute but one instrument.

9. This agreement shall not be binding upon the parties until the same shall have been signed by stockholders representing at least.....per cent. of the capital stock of.....

10. The Voting Trustee or his successor or successors, may by instrument in writing, duly executed and acknowledged, terminate this voting trust at any time.

IN WITNESS WHEREOF the several parties hereto of the first part have hereunto set their hands and seals, and the Voting Trustee has hereunto set his hand and seal in token of his acceptance of the trust hereby created, and the.....has caused these presents to be signed on its behalf by two of its officers and its corporate seal to be hereunto affixed, the day and year first above written.

No..... Schedule AShares

Voting Trust Certificate
.....CORPORATION

This is to certify that on.....or on the earlier termination of the voting trustwill

be entitled to receive a certificate or certificates for full paid shares of the par value of \$. . . . each of the capital stock of CORPORATION and in the meantime to receive immediate payment by the undersigned Voting Trustee of the dividends, if any, collected by the undersigned Voting Trustee upon a like number of such shares of capital stock standing in his name. Whenever dividends are declared upon any of such stock payable on a day certain to stockholders of record on an earlier day, the holder of this certificate on the earlier day shall be entitled to receive the payment of such dividends, as if he had been a stockholder of record on that earlier day. Until the termination of the voting trust, the Voting Trustee shall possess and be entitled to exercise all rights of every name and nature, including the right to vote in respect of any and all such stock, it being expressly stipulated that no voting right upon any such stock passes to the holder hereof by or under this certificate, or by or under any agreement, express or implied.

This certificate is issued pursuant to the terms of an agreement in writing dated, made and entered into between the Stockholders of said Corporation and said Voting Trustee, which agreement is on file with and is subject to all the provisions, terms, and conditions of such agreement.

This certificate is transferable only on the books which shall be kept for that purpose by said Voting Trustee, by the registered holder, either in person or by duly authorized attorney, according to rules which shall be established for that purpose by said Voting Trustee, and on surrender hereof; and until so transferred, said Voting Trustee may treat the registered holder as owner hereof for all purposes whatsoever, except that delivery of stock certificates hereunder shall not be made without the surrender of the certificate.

This certificate is not valid unless signed by the Voting Trustee and also countersigned and registered by the of, as registrar.

IN WITNESS WHEREOF, said Voting Trustee has signed this certificate this day of 19

Countersigned and registered this.....day of.....19..
.....

Transfer Agent & Registrar

Voting Trustee.

By.....

(Endorsement on back.)

For value received,.....hereby sell,
assign, and transfer unto.....the within
certificate of Voting Trustee and.....do....hereby irrevocably
constitute and appoint.....
Attorney to transfer the said certificates on the books of the
said Voting Trustee, with full power of substitution in the
premises.

Dated.....191...

.....

In presence of:

.....

Pledge of Stock to Secure Loan

AGREEMENT made between
..... hereinafter called Mr.
and hereinafter called
the Bankers, WITNESSETH:

WHEREAS, Mr. is largely interested in the stock
voting trust certificates and securities of the,
a corporation created and existing under the laws of the State of
....., and deems it to his financial interest that an
arrangement shall be made to establish a credit for said com-
pany at this time, and

WHEREAS, Mr. has requested the Bankers to
form a syndicate which will establish a credit to the extent of
..... dollars for the benefit of the
said Company substantially on the terms and
conditions of the contract, a copy of which is hereto annexed
marked "A," and

WHEREAS, the Bankers have expressed their unwillingness
to undertake this business without this agreement on the
part of Mr., and

WHEREAS, in order to induce the Bankers to undertake this
business Mr. has offered to make the agreement
hereinafter contained; now in consideration of the premises this
agreement WITNESSETH:

1. Simultaneously with the execution and delivery hereof
Mr. will deposit with the Bankers
dollars in par value of the capital stock of the
Corporation, represented by Voting Trust Certificates in
denominations satisfactory to the Bankers, and endorsed in
blank, and in proper negotiable form, all of which stock he
represents and guarantees is duly issued, fully paid and not
subject to any assessment.

2. At any time during the continuance of the loan referred to
in said Exhibit "A," or, if the loan be paid before that time, at

any time within six months from the date hereof, the Bankers may sell all or any part of said stock or Voting Trust Certificates of the said Corporation, provided that no sale shall be at less than dollars a share.

3. Of the amount realized on such sale or sales they shall apply dollars per share as hereinafter provided. Any sum realized above dollars per share shall belong to and be the sole and absolute property of the Bankers.

4. The Bankers shall have the right to distribute the stock to Syndicate Members as provided in the proposed Syndicate Agreement hereto annexed marked Exhibit "B."

5. If and when the said stock is so sold or allotted the Bankers will apply the receipts from said sales to the extent of dollars a share, in lieu of contributions by the Syndicate Subscribers, provided for by Exhibit "A" for the establishment of the credit therein provided. When the receipts from such sales equal the total amount of the Syndicate Commitment \$, and when the Company shall pay the commissions provided for by said Exhibit "A," the Bankers will assign to Mr. (but in no event, except in the discretion of the Bankers, at a date earlier than . . . months from the date hereof) such cash and securities as they then hold under the said Exhibit "A"; and thereupon, and *pro tanto* as such receipts from sale of stock are applied, and the commission paid, as herein provided, Mr. shall become vested with and shall succeed to the rights of the Syndicate Subscribers against the Company, but not to their rights to participate in any profit thereunder.

6. A liquidation of the said loan from sources other than by the sale of said stock shall not in any way affect the rights of the Bankers to sell such stock as herein provided, but after the loan is so liquidated, the sum of dollars per share of the sales price on sales thereafter made shall be paid to Mr. instead of being applied as aforesaid.

Escrow of Stock to Prevent Sale or Alienation

WHEREAS, the undersigned persons for various reasons have agreed that the certificates for certain shares of the capital

stock of.....shall be deposited with a trust company and no part thereof or of the receipts hereinafter mentioned representing the same shall be sold to parties other than those signing this agreement during the duration of this agreement,

Now, **THEREFORE**, in consideration of the premises and the mutual agreements herein contained and for other valuable considerations moving from each of us to the other, receipt of which is hereby acknowledged by each of us,

WE, the undersigned stockholders of....., a corporation of....., have deposited with the..... Trust Company of..... certain certificates for stock in said corporation, aggregating...% of the capital stock of said corporation and do hereby contract with each other in regard thereto, as follows:

1. Such certificates of stock shall remain with..... Trust Company of.....for the period of two years from date hereof, unless this agreement is cancelled on the written consent of all of the owners of said stock prior to the expiration of said two years. Upon the termination or cancellation of this agreement aforesaid, the certificates of stock deposited hereunder, shall be delivered to their respective owners.

2. We, each for himself, agree that we will not sell, pledge, assign, or in any way transfer or dispose of our said certificates of stock, or of our interest therein, or of the receipts of the said Trust Company for the same, either absolutely or subject to this agreement during said period of two years, excepting upon the written consent of all of the subscribers hereto.

3. The.....Trust Company of..... shall issue receipts reading as follows:

(Date)

Received from.....certificates for..... shares of stock in.....Corporation, to be held by us, under and in accordance with the terms of a certain agreement between certain stockholders of said company, dated.....,, which agreement has been deposited with us. This receipt shall not be negotiable or transferable and shall not be sold, assigned, pledged, or otherwise disposed of

in any manner whatsoever excepting as provided in said agreement.”

4. In case of the death of any of the subscribers hereto, during the period of said two years, his estate and his executor and administrator shall be entitled to the receipt of said depository above mentioned upon surrender of the receipt held by the decedent and in lieu of the receipt running to the party so deceased, but said estate, executor or administrator shall not be entitled to withdraw the stock represented by said receipt from under the terms of this agreement. In such case, if the deceased stockholder's interest herein has been sold, by reason of and in accordance with the law, the purchaser at such sale shall not be entitled to withdraw his stock from under this agreement, but shall be substituted herein in place of the deceased stockholder.

5. A new depository or depositories, in place of Trust Company of may be named at any time by a majority in interest of the persons signing this agreement and thereupon said certificates of stock shall be delivered to the new depository or depositories. Such designation must be in writing and signed and duly acknowledged by all parties thereto.

6. Said stock shall continue to stand on the books of the corporation as at present, and shall be voted as though this agreement had not been entered into, and all dividends and benefits going and belonging to said stock shall belong to the stockholders of record thereof, the same as though this agreement had not been entered into.

IN WITNESS WHEREOF, we have signed our names hereto and received from Trust Company of its receipt for our certificates deposited hereunder this ... day of 19 .

In presence of:

Accepted:

..... Trust Company.
By
Trust Officer.

Contract between Stockholders of Corporation for Control of Stock

AGREEMENT, made.....day of....., 19.., by and between....., and all of the Borough of the, City of..... and State of.....

WHEREAS the parties hereto are the sole stockholders in the corporations known as..... and , both incorporated under the Laws of the State of, each of the parties hereto owning an equal undivided.....interest in the share stock of the said corporations, and.....

WHEREAS the said parties hereto are also the officers and directors of the said corporations, and each of them is actively engaged in the business of the said corporation,

NOW, THEREFORE, the parties hereto, in consideration of the premises, and of.....dollars....., by each to the other in hand paid, the receipt whereof is hereby acknowledged, do hereby agree to and with each other as follows:

1. Neither of the parties hereto shall become endorser of any note or surety upon any bond without the written consent of the other parties to this agreement.

2. The parties hereto and each for himself does hereby covenant that he will not hypothecate, sell or convey, any part of his stockholdings in either of said corporations aforesaid to any person, firm or corporation, excepting upon the performance of the following terms and conditions: Such stockholder or stockholders who shall desire to continue in the management of either of said corporations, or both of them, shall have the option, for a period of not exceeding thirty days, to purchase said share or shares of stock at the market value thereof, to be determined in manner as follows, to wit:

a. The assets shall be valued at the book value to be fixed by an immediate inventory thereof.

b. The good will of.....shall be estimated by taking the average yearly profits during the previous years and multiplying the same by..... No good will shall be allowed for the holdings of the.....

c. The value of the assets shall be added to the value of the good will as above set forth, and such resultant sum shall be the total sales value of the share stock of the said corporations.

d. The retiring stockholder shall then be paid by the continuing stockholder such sum or sums as his stock shall then be deemed worth per share, upon the basis of value ascertained in subdivisions I, II and III of paragraph "second" hereof. Such purchase price of stock in.....to be paid therefor, not later thanyears from the date of sale, with interest at.....% per annum, the stock sold to be security for the purchase price until fully paid, but it shall be deposited in escrow with some bank or trust company agreeable to the parties. As to....., the price shall be paid under like terms and conditions, but withinyears of sale.

e. Real estate assets shall be valued by an appraiser to be selected by the unanimous choice of the parties hereto, or in the alternative, by a board of....., to be selected by each, and the decision of.....of such appraisers shall be binding.

3. In the event of the death of either party hereto, the stock held by the decedent shall be immediately offered to the remaining stockholder or stockholders, who shall, within days accept or reject such offer, and upon acceptance thereof, the price and manner of payment shall be as set forth in paragraph "2" hereof.

4. In the event of the withdrawal, resignation or death of either of the parties hereto, any salary or salaries received by him from the said corporations shall immediately cease.

5. It is expressly agreed by the parties hereto, that they will not make or enter into any agreement, or contract with others that would tend to amend, alter, rescind or abrogate the provisions hereof, nor will they make any will, deed of gift, or other testamentary document in contravention of its terms.

6. This agreement shall be binding upon the heirs, executors and administrators of each of the parties hereto.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written.
 (Signed).....

In presence of:

.....

Underwriting Agreement

AGREEMENT madebetween.....
 and....., together hereinafter called the Managers, and the subscribers hereto, severally, of whom each is hereinafter termed a subscriber, and all of whom, together with the Managers, constitute the syndicate.....
(hereinafter called the corporation) which has been or is to be formed under the laws of the State of.....
, or some other State with the approval of the Managers with an authorized capital stock of \$.....consisting of \$.....par value ofper cent. cumulative preferred stock (participating as to dividends, and preferred as to assets on liquidation to its par value and accrued dividends, and, in case of voluntary liquidation, with a premium of..... per cent. at which premium also said stock will be redeemable) and \$.....par value of common stock, divided into shares of \$.....par value, and has issued or proposes presently to issue not to exceed \$..... of said preferred and \$.....of said common stock, the latter to be deposited under a five years' voting trust agreement under which.....and..... and..... are to be the voting trustees, all as more fully set forth in a letter dated.....fromand.....which is on file with the Managers and copies of which have been sent to the subscribers. The parties hereto desire to form a syndicate on the terms and for the purposes hereinafter set forth.

In consideration of the premises and of the mutual promises herein contained, the parties hereto agree, and the subscribers severally agree with one another and with the Managers, as follows, each subscriber and party agreeing for himself and not for any other subscriber or party:

1. The parties hereby form a syndicate for the purpose of purchasing from the Managers and associates (hereinafter called the vendors), if, as and when received by the vendors, \$. par value of said preferred stock and voting trust certificates for \$. par value of said common stock at the price of \$. with accrued dividends upon the preferred stock, for each \$. par value of preferred stock and \$. par value of common stock, and for the other purposes herein expressed. Each subscriber shall indicate in his subscription hereto the principal amount in cash for which, together with the accrued dividends on a proportionate amount of the preferred stock, he is or shall be bound, and, to the extent of his subscription, each subscriber will make cash payment on call of the Managers for the purposes herein indicated, without reference to the receipt or possession by the Managers of any of the stock. The several subscribers shall be called on to make payments of cash in respect of their subscriptions only ratably according to the several amounts thereof; but, to the full extent of his own undertaking, each subscriber shall be so responsible regardless of performance or non-performance by any other subscriber. Each subscriber shall be liable only to the extent of his individual participation in the syndicate. Nothing contained in this agreement, or otherwise, shall constitute the subscribers partners with, or agents for, one another or with or for the Managers.

2. The Managers shall have the sole direction and management and the entire conduct of the transactions and business of the syndicate. The subscribers irrevocably grant to the Managers full power and authority, for account of the syndicate, to do any and all acts and to enter into and execute any and all agreements or other instruments necessary, proper, or expedient in the premises to carry out and perform this agreement according to its true intent and meaning, including the purchase from the vendors at the price and upon the terms aforesaid of said stocks, the purchase or repurchase of stock of said issues in the market or from others, from time to time, for account of the syndicate, and the public or private sale or resale from time to time, in the discretion of the Managers, of

any or all stocks acquired for syndicate account, and generally the conduct of such transactions as the Managers in their discretion may deem best for the interests of the syndicate, provided, however, that the Managers shall not have the right to sell said \$. of preferred and \$. of common stock, or any part thereof, at less than per cent. of the par value thereof and accrued dividends for preferred stock and per cent. of the par value thereof for common stock. For the purpose of paying for any of the stocks the Managers may in their discretion borrow such amounts from time to time, at such rates of interest and on such terms as they may deem best, and pledge any of the syndicate stocks as security for any such advances; or the Managers may themselves make such advances or any part thereof upon the like pledge and security, and may charge interest on such advances; but no personal liability, except in respect of such calls, either to the Managers or to any one making such advances, shall be incurred by or imposed upon the subscribers for the payment of any such advances. The subscribers irrevocably grant to the Managers full power and authority, for account of the syndicate, to employ, and fix the compensation of, depositaries, brokers, attorneys, counsel, agents and other assistants; and plenary discretionary right is expressly given to the Managers from time to time to consent to any modifications of and to settle the form and terms of the certificate of incorporation of the corporation and the certificates of said stocks (whether in respect to the provisions for the benefit or protection of the holders of said stock, respectively or otherwise), the voting trust agreement, the name of the corporation and the State of incorporation, and any contract under which the corporation shall acquire the stocks of other companies, and notwithstanding the terms of said letter in respect to any or all said matters. The term "stocks" or "preferred stocks" whenever used in this agreement shall be deemed to include interim or temporary certificates therefor, and the term "stocks" or "common stock" wherever used in this agreement shall be deemed to include voting trust certificates for common stocks and interim or temporary certificates therefor. The Managers may, in their discretion, rectify any

errors, reconcile any inconsistencies and supply any omissions in this agreement. The enumeration of particular or specific powers in this agreement shall not be construed to limit the general powers and discretion intended to be conferred upon and reserved to the Managers in order fully to authorize them to do any and all things by them, in their discretion, deemed proper, necessary, or expedient to carry out the purposes of this agreement. The Managers shall be under no responsibility for the performance by the corporation, or by any persons from whom the vendors may have arranged to procure the stocks, of any agreement on its or their part, nor in respect of the validity or form of any such agreement, nor in respect of their validity or form of the certificate of incorporation of the corporation, or said stock or the certificates therefor, or the voting trust certificates for common stock, or the voting trust agreement, or any contract above mentioned; and neither of the firms constituting the Managers shall be liable under any of the provisions of this agreement, nor in or for any matter or thing connected therewith, except for its own want of good faith or wilful negligence as such firm; and no obligation not expressly assumed by them by this agreement shall be implied herefrom.

3. For all payments made hereunder each subscriber shall receive stocks or a receipt or certificate signed by the Managers, or on their behalf by one of the firms constituting the Managers, in such form as the Managers may determine. Any receipts or certificates issued by the Managers, and all rights and obligations hereunder of the respective subscribers, may, in the discretion of the Managers, be made transferable in such manner and on such terms and conditions as the Managers may prescribe; but no transfer shall be valid unless assented to in writing by the Managers, and they shall be under no obligation to give such assent; and, though such assent be given, unless otherwise therein expressly provided, the transferrer shall continue liable for the payment of any unpaid part of the transferred subscription and for the payment of any advances made by the Managers upon or in respect of the transferred subscription, with interest upon such advances as aforesaid, until the same shall be fully paid. The acceptance of any

participation in the syndicate allotted by the Managers or holding of a receipt or certificate issued as aforesaid shall render those to whom the Managers shall grant such allotment, or in whose names they shall issue such receipt or certificate, liable as subscribers hereunder as fully to all intents and purposes as if they had duly signed this agreement. No subscriber shall be entitled to receive any of the stocks or the proceeds thereof until the termination of the syndicate. In the meantime, in their discretion, the Managers may retain all or any of such stocks or proceeds or may deliver or pay to any subscriber his proportionate part thereof. Stocks so delivered to the subscribers shall, until the termination of the syndicate, be held by the subscribers, subject to the control of the Managers, to be returned to them upon demand, or upon their order, for sale for syndicate account.

4. Each subscriber hereby ratifies, assents to, and agrees to be bound by any action of the Managers taken under this agreement, and agrees promptly to perform his undertakings hereunder. The failure of any subscriber to perform any of his undertakings hereunder shall not affect or release any other subscriber. The Managers may, in their discretion, at any time and either before or after partial payment, by written consent, release any subscriber from the whole or any part of the subscription of such subscriber, and may accept new subscribers in place of any subscribers so released. In case the Managers, or either of them, shall become subscribers hereto they may at any time, and either before or after partial payment, reduce their own obligations as such subscribers and accept new subscribers for the portion of their own obligations thereby released. In case of the failure of any subscriber to perform any of his undertakings hereunder, the managers may take or may allow other persons, firms, or corporations, members of the syndicate or otherwise, to take all or any part of the participation of the subscriber so failing to perform his undertakings. Upon the failure of any subscriber to perform any of his undertakings hereunder, the Managers shall have the right, at their option and in their discretion, to exclude such subscriber from all existing and all further interest and participation in the syndicate, and thereupon all interest and right of

such defaulting subscriber or his transferees shall cease and determine and the managers shall have the right in their discretion either to forfeit as liquidated damages and payments such subscriber may have theretofore made hereunder or to hold such a subscriber liable for the balance of his subscription and to enforce such subscription and to recover from such subscriber all damages caused to the syndicate by the failure of such subscriber to perform. No liability or obligation whatever shall attach to the managers or any other subscriber because of the failure of any subscriber to perform any of his undertakings hereunder.

5. Upon the complete performance of all his undertakings and the termination of the syndicate each subscriber shall be entitled to receive his ratable portion of the syndicate stocks or of the proceeds of so much thereof as may have been sold by the Managers, less his pro rata share of the syndicate expenses. The net profits of the syndicate shall be divided among the subscribers in proportion to their respective subscriptions, and the lossess of the syndicate shall be borne by the subscribers in the like proportion. Apportionment and distribution by the Managers of profits or losses, outlays, charges, and expenses shall be conclusive on the syndicate and the subscribers, as shall be the written statement of the Managers of the results of the syndicate. The Managers may be subscribers to the syndicate and, to the extent of such subscriptions, are to participate in the profits and lossess of the syndicate pro rata to the same extent as other subscribers. The Managers may purchase, or be interested in the purchase of, any of the stocks forming the subject of this agreement and may deal with the syndicate in the same manner as other persons. The Managers may purchase, sell, or otherwise dispose of, or be interested in the purchase, sale, or other disposition of, any stocks or other securities of the corporation or its subsidiary companies without restriction and without responsibility therefor to the syndicate. The expenses heretofore or hereafter incurred by the Managers and vendors in or about the incorporation of the corporation, its acquisition of the stocks of subsidiary companies, the investigation of their properties, titles, and business, or otherwise, including fees of counsel, appraisers, and accountants,

stamp taxes, printing, brokerages, and commissions, shall be charged to, and paid by, the syndicate. The managers shall make no charge to the syndicate for their services as managers, but they and the other vendors shall be entitled to retain for their own benefit the difference in common stock and cash between the price paid by the vendors.

6. The syndicate shall continue until....., notwithstanding the prior sale by the Managers of all or any of the syndicate stocks, unless sooner terminated by the managers in their discretion. The Managers shall have the absolute right to terminate the syndicate if the corporation, or any persons from whom the vendors may have arranged to procure the stocks, shall be unable or fail to carry out, or shall be prevented from carrying out, the sale of the stocks, to the vendors, or, if in the judgment and discretion of the Managers, the interests of the syndicate require its termination prior to the time in this agreement limited therefor, and whether or not the objects contemplated by this agreement shall have been wholly or partially performed.

7. Nothing contained in this agreement shall be construed as creating any trust or obligation in favor of any person or corporation other than the parties hereto nor any obligation in their favor otherwise than as is herein expressly provided. This agreement shall extend to and bind the successors and personal representatives of the respective parties.

8. Books shall be kept by the Managers, in the City of, in which books shall be recorded the addresses of such of the subscribers as shall furnish the same. Any notice to or call upon subscribers, or any of them under this agreement, shall be deemed to have been duly given and made by the Managers if mailed to subscribers directed to the addresses so furnished by them. The Managers shall be under no obligation to ascertain the address of any subscriber to whom notices or calls shall have been so directed, nor to see to the actual receipt thereof by subscribers, nor to ascertain the addresses of or give notice to any subscriber who shall not have so furnished his address. All notices and calls shall be signed by the Managers jointly, or by one of the firms constituting the Managers, with the approval of the other, on behalf of both.

9. Each of the firms constituting the Managers acts as a copartnership and in case of any change in either of said firms, such firm or its successor firm, as from time to time constituted, shall continue with all the powers, rights, and title vested in such firm hereunder without further act or assignment.

10. Duplicate originals of this agreement shall be signed by both of the firms constituting the Managers and one retained by each. Counterparts may be signed by subscribers and retained by the Managers, and all shall be taken and deemed one original instrument.

11. In consideration of the irrevocable rights in them vested hereunder and the promises of the several subscribers, and upon the terms and conditions herein contained, the Managers have become parties to, and in good faith will endeavor to consummate the purposes of, this agreement.

12. This agreement is entered into under and shall be construed in accordance with the laws of the State of.....

Stockholders' Committee—Deposit Agreement

AGREEMENT, made between.....
 and their successors (hereinafter called the
 "Committee"), and such holders of the shares of the
 stock of, a corpo-
 ration (hereinafter called the "Company") as shall become
 parties hereto in the manner hereinafter provided (herein-
 after called the "Depositors"), WITNESSETH, that

WHEREAS, Receivers have been appointed for the property of the said Company and the Depositors deem it necessary that they should unite and act together for the protection of their interests and for the purposes hereinafter stated;

Now, THEREFORE, in consideration of the premises and of the advantages and benefits which will accrue to them respectively from a union of interests and combination of action to protect and enforce their rights, and in consideration of other good causes and considerations, the Depositors, each for himself and not the one for the other or any of the others, agree with each other and with the Committee and its successors as follows:

1. The depositors hereby make, constitute and appointand their respective successors, selected as hereinafter provided, as the Committee (hereinafter referred to as the "Committee"), with each and every and all the rights, privileges and powers given to and vested in the Committee by this Agreement.

2. Holders of shares of the stock of the Company may become parties to this Agreement by depositing under the terms hereof within such period as the Committee may limit for that purpose with the, which is hereby designated as Depositary, certificates for their shares of stock duly endorsed in blank, and having affixed thereto the necessary stamps covering taxes for the transfer thereof; and such deposit and the acceptance of the Certificate of Deposit issued therefor shall have the same force and effect as if the Depositors had in fact subscribed their names to this Agreement; and the Depositors agree that the deposit of said certificates of stock assigns and vests in the Committee full and absolute title to the shares represented thereby and deposited hereunder, and the Depositors further agree at any time upon the request of the Committee to make, execute and deliver any and all transfers, assignments or writings required by the Committee to evidence further the vesting of the ownership of the said shares of stock deposited hereunder in the Committee or its nominee or nominees.

3. The Committee may limit or extend the time within which, and fix the terms and conditions under which, a deposit may be made under this Agreement in respect to deposits received after such limit shall have expired, and either generally, or in special instances, may in its discretion accept deposits after the time limit has expired and shall have full power to decide upon the plans and methods to be adopted to carry into effect the general purposes of this Agreement.

4. For the deposit of certificates of stock the Depositary will issue Certificates of Deposit therefor in form approved by the Committee, and thereafter no separate action will be taken by the Depositors or any of them with respect to the shares of stock represented by the certificates so deposited. All certificates of Deposit shall bear on their face the name

of the registered holder thereof and shall be subject to the terms of this Agreement, and holders of such Certificates of Deposit shall be held as assenting to this Agreement as if they had severally subscribed to, executed and delivered the same. The Certificates of Deposit issued hereunder shall be transferable only upon the books of the depository or sub-depository, and upon such transfer all rights of the Depositor in respect of the shares of stock represented by such Certificates of Deposit shall pass to the transferee, who shall be substituted in place of the prior holder subject to this Agreement. All transferees of such Certificates of Deposit, and all persons having any interest therein at any time, whether by voluntary assignment or by operation of law, as well as the original holders of Certificates of Deposit hereunder, shall be deemed included within the term "Depositors" when used herein, and shall be bound by all the terms hereof and shall be considered as parties hereto. Each of said Certificates of Deposit may be treated by the Committee and the Depository as a negotiable instrument, and the holder for the time being may be considered and treated as the absolute owner thereof and of all of the rights of the original Depositor of every character, and by any notice to the contrary.

The Committee may in its discretion at any time and from time to time cause the transfer books for the Certificates of Deposit to be closed for such period or periods as the Committee may deem expedient and may treat the registered holders of such Certificates of Deposit at the time of the closing of said books as the actual owners thereof.

5. The Depository shall hold the stock deposited with it for the account and subject to the control and written order of the Committee, authenticated by the Secretary of the Committee, who are hereby given the right to transfer or cause to be transferred all or any part of the shares of stock deposited hereunder into its name or into the name or names of its nominee or nominees.

6. The Depositors, in addition to vesting in the Committee full and absolute title to all shares of stock deposited under this Agreement, hereby further constitute and appoint the said Committee their attorneys in fact, and hereby authorize

and empower the said Committee either in the name of the Depositors, or in the name of the Committee, or in the name of any other person or persons as the Committee may deem proper, to institute, begin or take, or to cause to be begun, instituted or taken, such actions or proceedings in law or in equity, or otherwise, and to intervene in such suits and proceedings, and to execute such papers, authorizations, consents, powers of attorney, requests or other instruments, as will in the judgment of the Committee protect or advance the interests of the Depositors, or otherwise for carrying out the purposes of this Agreement. Full power is hereby given to the Committee to substitute or to revoke any and all such powers of attorney or other instruments which they may execute, to discontinue, compromise or settle, or cause to be discontinued, compromised or settled, any and all such actions and proceedings, to institute others, and to discontinue, settle or compromise the same, and to collect any and all moneys which are or may be due and payable to said Depositors, or any of them, as holders of shares of stock deposited hereunder, or as their distributive share in any action or otherwise, and said Depositors further give and grant into the Committee full power and authority to do and perform any act and thing requisite or necessary to be done in and about the premises as fully to all intents and purposes as the Depositors might or could do if personally present, hereby ratifying and confirming all that the Committee or its appointees or substitutes shall lawfully do or cause to be done by virtue hereof.

In furtherance and not in limitation of any of the other provisions hereof and of the powers and authority vested in the Committee hereunder, the Depositors do hereby give and grant unto the said Committee full power and authority to call and to attend all stockholders' meetings, and at such meetings to vote, in such manner as the Committee may in its absolute discretion deem advisable, on the stock deposited hereunder on all questions which may come up at such meetings, including the voting for the election of directors, as fully to all intents as the Depositors might or could do if personally present, hereby giving and granting unto the said Committee full power of substitution and revocation.

7. The Committee shall elect a Chairman and Secretary and may from time to time choose such other officers and confer upon any of its officers such powers as to it may seem proper, and may make, from time to time, and alter and rescind such rules and regulations for the conduct of its business as may seem advisable. Any member of the Committee may by written appointment empower any person (who may be member of the Committee) to vote and act at any meeting of the Committee, including any adjournment or adjournments thereof, as his proxy with all the powers of the member making the appointment; and a majority of the members of the Committee as at any time constituted shall constitute a quorum. Any action may be taken upon the consent of a majority of the whole Committee given in person or by proxy at a meeting, or in writing without a meeting, and such action of the majority shall constitute the action of the Committee and shall have the same effect as if assented to by the whole Committee.

Any member of the Committee may resign by giving notice in writing to the Chairman or Secretary thereof, and the Committee may settle any account or transaction with such member and give full release and discharge upon such resignation. The Committee may add to its number. It may, but need not, fill all vacancies occurring in the Committee by death, resignation, or otherwise, and all substituted or additional members so appointed shall possess and exercise all the powers and duties hereby conferred upon the original members as fully and in every respect as if they had been originally named as parties hereto.

The present or future members of the Committee or the Trust Company Depositary hereunder may be or become Depositors hereunder and may be or become pecuniarily interested in any of the property or matters which are the subject of this Agreement, including the right to become members of any syndicate formed in connection therewith, and they or any of them may become voting trustees or officers or directors or stockholders or employees of any corporations now existing or which may be hereafter organized in connection therewith, or otherwise. All actions of the Committee,

or its members, or of the Depositary in good faith shall be valid notwithstanding such interest.

8: The Committee may appoint and discharge such several counsel, attorneys, agents and employees as it may see fit, and upon such terms as the Committee shall agree upon for such respective counsel, attorneys, agents and employees. Neither the Committee nor any member thereof shall be personally liable for any act or omission of any agent or employee selected by it or them or any of them, nor for any action taken or not taken, in good faith in the belief that any deposited security or other instrument or any signature is genuine or effective, nor for anything done or not done under the advice of counsel, nor for any error of judgment or mistake of law or fact, nor for anything except his, its or their own individual wilful misconduct, and neither the Committee nor any member thereof shall be personally liable for acts or defaults of the other or of each other or of any other person or body, nor shall said Committee nor any of its members be liable for any failure to exercise any of the powers hereby granted.

The determination of the Committee of the fair proportion of the compensation, if any, of any member of the Committee and the expenses and disbursements of the Committee payable by any Depositor upon the termination of this Agreement, or upon his withdrawal therefrom in accordance with the provisions hereof, shall be final and conclusive. In no such event shall the liability of any Depositor (except for the actual charges incurred in any litigation in which the Committee may become involved either as parties thereto or by intervention or recognition without becoming actual parties) exceed fifteen cents for each share of common stock represented by Certificates of Deposit surrendered upon such termination or withdrawal unless a greater sum shall have been consented to in writing by the said Depositor or his predecessor in interest.

The members of the Committee, whether personally interested as stockholders or not, shall be entitled to be reimbursed for their disbursements and expenses hereunder, and to such reasonable compensation as the Committee may determine, and any plan and Agreement of reorganization or read-

justment which the Committee may adopt or approve, as herein provided, may make provision for all expenses of the Committee.

9. The Committee may construe this Agreement and any plan adopted hereunder, and its construction thereof and action thereunder in good faith shall be final and conclusive. The Committee may supply any defect or omission or reconcile any inconsistencies in such manner and to such extent as may be deemed by it necessary or advisable to carry out the general purposes of this Agreement or of any such plan, properly and effectively, and the Committee shall be the sole judge of such necessity and advisability. It may attempt to carry one or more plans into effect and abandon or modify the same in any and all respects. The enumeration of specific powers hereby given to the Committee shall not be construed to limit or restrict the general powers herein conferred or intended so to be, and it is distinctly declared that it is the intention to confer upon the Committee, in respect to all shares of stock deposited or to be deposited, and in all other respects, all powers which the Committee may deem necessary or expedient in or towards the carrying out or performing the general purposes hereof in any respect, even though such power be apparently of a character not now contemplated. The methods and means and details to be adopted shall be entirely discretionary with the Committee. The Committee shall have full power to organize any corporation provided for under any plan adopted hereunder and to vote upon any stock thereof, by proxy or otherwise, and to appoint or to concur in the appointment of trustees in any voting trust therein, or in any voting trust in the stock of the company.

10. The Depositary shall be entitled to such compensation for its services as depositary as the Committee shall fix by agreement with it. All directions or instructions given by the Committee to, or powers conferred by the Committee upon, or acts done by the said Depositary hereunder shall be binding upon the Depositors, notwithstanding the termination of this Agreement, or abandonment or modification hereof, or return of the security. The Depositary may accept without further proof all statements lodged with it by the Committee and act

thereon and shall be protected in all actions taken by it in pursuance of the instructions of the Committee.

The Depositary may at any time resign or be removed by a majority vote of the Committee, and the Committee, by such vote, may designate a new depositary. Upon receipt of a copy of such vote, duly authenticated by the Secretary of the Committee, and upon payment of all charges and amounts due such depositary ceasing to act, it shall deliver over to the new depositary all property held by it under the terms of this Agreement and such new depositary shall receive all such property so delivered and shall hold the same under the terms of this Agreement, the same as if the new depositary were the Depositary named in this Agreement.

The Committee may designate other Trust Companies or Banks as sub-depositaries, to receive upon deposit, under the terms of this Agreement, and to receipt as such sub-depositaries, for stock deposited hereunder, and to deliver the Certificates for such stock upon and subject to the order and direction of the Depositary. The Depositary shall not be, in any manner, liable or responsible for or by reason of any act or default of any sub-depositary agent or agents so designated and all parties hereto covenant and agree to indemnify and same said Depositary harmless from any loss or liability that may result to the Depositary by reason of any such designation.

11. The Depositary or sub-depositary shall be bound only to act with reference to the deposited stock or the funds paid to the Depositary or sub-depositary for the Committee or with reference to any matter in connection with this agreement or plan in accordance with the written directions of the Committee or a majority thereof, and the written directions of the Committee or a majority thereof shall be a complete justification for any action or omission to act of the Depositary or sub-depositary. The Depositary or sub-depositary and its attorneys and agents assume no liability for the execution of the purposes of this agreement or any part thereof, nor for any error of judgment. Said Depositary or sub-depositary shall incur no liability whatsoever, except for its gross negligence or wilful misconduct, and shall be protected in acting upon any notice, consent, request, certificate, affidavit, letter, telegram

or other paper or document believed by it to be genuine and to have been signed or sent by the proper party.

12. The Committee is authorized and empowered to prepare and adopt and approve a plan or plans for the reorganization or readjustment of the affairs of the Company. It may negotiate with any and all of the holders of securities or obligations of the Company, or any Committee thereof, in respect to the provisions of such plan or the execution thereof on the part of the Depositors. Said plan or plans shall be in such form and contain such terms, powers and conditions as shall to the Committee seem equitable and fair, and may include the appointment of trustees to hold and vote upon the stock, or any part or any class of stock of the Company, or upon the stock or any part or any class of stock of the reorganized corporation, upon such terms and for such time as to the Committee may seem proper. Such plan or agreement may provide for the sale of the properties of the Company, and for the purchase of all or any of the property at any foreclosure or other sale, or the acquisition of other property which, in the opinion of the Committee, may be advantageous for the preservation, improvement, development or protection of the securities deposited with the Committee; for the organization of such corporation or corporations as may be suitable and for the acquisition in any manner by such corporation or corporations of such stock, securities or property; for the issue, disposition and distribution of all or any of the stock or bonds of the new corporation or corporations; and for the raising of any sums in cash deemed necessary by the Committee in its uncontrolled discretion for any of the purposes of the organization or readjustment or for the reorganized corporation or corporations. In the event of the adoption or approval by the Committee of any such plan, a copy thereof shall be filed with the Depositary and a brief notice of the filing of said plan shall thereupon be published by the Committee.....a week forsuccessive weeks in a newspaper published respectively in each of the following cities:....., and such filing of said plan and publication of said notice shall be conclusive notice to all Depositors of the adoption of said plan by said Committee. Any Depositor who may not assent

to such plan, may, within days after the date of the first publication of such notice, withdraw from this Agreement and dissent from such plan at his option, by filing with the Depository a written notice of his dissent, specifying the dates and numbers of all Certificates of Deposit held by him, and of his desire to withdraw from this Agreement. Upon the filing of such notice of dissent and the payment for the account of the Committee of such sum as the Committee shall, in its discretion, fix as a fair proportion of the expenses and disbursements of the Committee payable by the Depositor so dissenting, on such withdrawal such Depositor shall be fully released from the obligations of this Agreement and shall cease to have any rights hereunder and to be a party hereto and shall be entitled to receive from said Depository, upon the surrender to it of the Certificates of Deposit held by him with properly executed transfers thereof and upon the payment of all stamp taxes required by law, stock to the amount set forth in the Certificates of Deposit so surrendered.

In the absence of any such express dissent filed by any such Depositor, assent to and ratification of any such plan shall be conclusively and finally assumed and is hereby expressly conferred and irrevocably given, whether or not such Depositor shall have had actual notice of the adoption, approval or filing of such plan, or of the contents thereof. The Committee shall have power to determine whether a sufficient assent has been made hereunder to justify it in declaring any plan adopted under this Agreement to be operative, and such declaration shall thereupon be filed with the Depository and notice thereof shall be given in such manner as the Committee may deem proper.

The Committee undertakes in good faith to endeavor to carry out any plan which may be declared operative under this Agreement if they deem it advisable, but it is expressly agreed that the Committee assumes no responsibility or obligation whatsoever in respect thereto.

13. The deposited shares of stock shall be charged with the payment of the compensation, expenses and disbursements of the Committee and of the Depository. The Committee is authorized to borrow such sums of money as may in its judg-

ment be necessary for the payment of its compensation and expenses, and the compensation of its counsel, attorneys, agents and other employees, and the compensation and expenses of the depositary, and also such other sums as the Committee shall deem necessary for any purpose for the protection of the Depositors; and the Committee may pledge for the payment of the money so borrowed, the deposited stock, or a part thereof. Any pledge of or change upon the stock deposited hereunder shall be made subject to the rights in respect of Depositors to receive stock of the class and of the amount set forth in the Certificates of Deposit respectively held by them, when entitled thereto under any of the provisions of this Agreement, subject to the compliance with the conditions in respect thereof in this Agreement set forth, upon making payment of their proportionate share of the expenses and disbursements to the Committee as provided in Section Eighth hereof. Nothing in this Agreement shall obligate any Depositor to contribute or pay any sum of money except as a condition of obtaining the shares of stock represented by his Certificate of Deposit, upon the termination of this Agreement, or his withdrawal therefrom in accordance with the provisions hereof, or as a condition of participating in any plan which provides for any such payment, and otherwise recourse shall be had only against the deposited stock and other property in the possession of the Committee.

14. The Committee shall have power whenever it may deem proper to terminate this Agreement, either in whole or from time to time in respect to the stock deposited hereunder, and thereupon, upon surrender of the Certificates of Deposit to the Depositary, properly endorsed in blank, and upon payment to the Committee by the holders respectively of their fair proportion, as determined by the Committee, of the expenses and disbursements of the Committee, and upon payment of all stamp taxes required by law, stock deposited hereunder shall be returned to or distributed among the holders for the time being of the Certificates of Deposit, according to their respective interests in such stock. Any holder of a Certificate of Deposit, by the surrender of the Certificate and the receipt of any shares of stock distributed by the Committee

upon the termination in whole or in part of this Agreement, or allotted to such holder upon his withdrawal as hereinabove provided, releases and discharges the Committee and the Depository, and their agents, from all liability and accountability of any character or description whatsoever. Upon the termination in whole of this Agreement as aforesaid, the Committee shall file with the Depository its account of its expenses and disbursements, and the same shall be conclusive upon all Depositors hereunder.

15. This agreement and all provisions thereof shall bind and benefit the said parties hereto, each of their survivors, executors, administrators, successors, and assigns, but shall not constitute and shall not create any trust or obligation of any character in favor of any person not a party hereto; and nothing herein contained shall be construed to constitute a partnership between any of the parties hereto.

IN WITNESS WHEREOF the Committee has subscribed this Agreement and the Depositors have become parties hereto by the deposit of their Certificates for shares of stock of the Company and the receipt and acceptance of Certificates of Deposit issued hereunder, as of the day and year first above written.

Deposit Agreement—Contemplating Plan of Reorganization— Another Form

AGREEMENT made this.....between such holders of the.....Bonds of..... (hereinafter called the "Company"), due on or before.....; and such holders of the debentures, preferred stock, and other securities of or claims against the said Company, as shall become parties to this agreement in the manner hereinafter provided (hereinafter called the "Depositors"),and..... (hereinafter called the "Committee");

WHEREAS, the Company is now without any quick assets with which to continue its business; and

WHEREAS, the said Company is the owner of certain real estate on which there is a power plant furnishing heat and power to buildings on the property, and buildings occupied by

tenants, and other buildings which might be leased or otherwise profitably employed, which power plant will be discontinued for lack of means to operate it, and all of which buildings and power plant will deteriorate in value, tenants, and opportunities for leasing, or other use of the property lost if the property is not kept up and used for the purposes to which it is adapted; and

WHEREAS, the holders of the.....Bonds, and the holders of debentures, preferred stock, and other securities of or claims against the said Company, desire to organize and unite for the protection of their interests and thereby secure concerted action in order to preserve the property and assets of the Company;

NOW, THEREFORE, in consideration of the premises and of the benefits and the advantages to be derived by them respectively from the union of interests and concert of action, the Depositors, each for himself and not for any of the others, do hereby agree with each other and the Committee as follows:

1. The Depositors hereby make, constitute and appoint the Committee and their respective successors selected as hereinafter provided, as a Committee for the purposes and with the powers in this agreement provided, and further hereby constitute and appoint said Committee,....., of, as the Depositary for the purposes stated in this agreement. A copy of this agreement signed by the Committee shall be filed with the said Depositary, and shall be conclusive evidence of its authority to act as such. The Committee may in its discretion change the Depositary, which change shall be signified to the original Depositary by a written notice addressed and mailed to it, postage prepaid, the provisions hereof in relation to the appointment, rights and duties, of the original Depositary to apply to any successor Depositary.

2. The Depositors respectively agree to assign, transfer and deliver, and do hereby assign, transfer and deliver to the Committee, the claims against the Company, the bonds, debentures, preferred stock, and all right to receive common stock of the Company and all documentary evidence of any such right, all hereinafter called "Securities," the nature, amount and class

of which is set forth at the end hereof. All the Bonds shall have attached all coupons. All securities of the Company, including stocks of whatever class, title to which passes by endorsement, except those in terms payable to bearer, deposited as herein provided, shall be properly endorsed in blank without recourse, and all of said securities of the Company so deposited shall have attached thereto all stamps required by law, either Federal or State, to make the transfer effective and legal.

3. Whenever an instrument of assignment is necessary, it shall be executed in blank, in such form as shall be approved by counsel to the Committee and shall have attached thereto all stamps required by law, either Federal or State, to make the transfer effective and legal.

4. The Committee is hereby vested, under the terms of this agreement as Trustees of an express trust, with the legal title to all such bonds, debentures, preferred stock, rights and other securities and claims as may be deposited and endorsed or assigned under this agreement and to all coupons, if any, attached to any of said bonds or debentures, and all securities of whatever character so deposited or assigned shall be held by the Depositary subject to the order of the Committee.

5. The deposit with the Depositary or the endorsement or assignment to the Committee or its nominee of any of said securities of whatever character shall constitute the respective depositors parties to this agreement and entitle them to the benefits and bind them by all the terms hereof with the same force and effect as if they had actually executed this agreement. All securities deposited with or assigned to the Depositary or endorsed or assigned to the Committee's nominee, shall be held by the Depositary or by the said nominee, as the case may be, subject to the order of the Committee. Neither the Depositary, the Committee nor its nominee shall be liable for any action taken in good faith in the belief that the depositor or assignor of any securities of the Company is the lawful owner and holder thereof, or that any document or signature transferring or purporting to transfer any of said securities is genuine, but all loss or liability, if any, of the Depositary or of the Committee or of the Committee's nominee, caused otherwise than

by bad faith shall be conclusively deemed to be part of the expenses of the Committee as herein provided for.

6. Upon every such deposit, endorsement or assignment, a Certificate of Deposit shall be issued by the Depositary substantially in one of the forms hereto attached, stating the name of the Depositor and describing the character of the security and the amount thereof deposited, endorsed or assigned, and the same shall be delivered to the Depositor. The interest represented by such certificate of deposit shall be assignable, subject to the terms and conditions of this agreement, by transfer upon the books kept by the Depositary for that purpose by the holder thereof in person or by attorney upon the surrender of such certificate of deposit duly endorsed for transfer. Upon the transfer of any certificate of deposit, the transferee shall for all purposes be substituted for the prior holder, and the holders of the respective certificates of deposit may be treated as absolute owners thereof and have all of the rights of the original depositor, and neither the Committee nor the Depositary shall be affected by any notice to the contrary. The Committee may, in its discretion, from time to time, cause the transfer books of the certificates of deposit to be closed for such period or periods as it may deem expedient. The Committee may, from time to time, appoint such registrar or registrars for certificates of deposit as it may deem advisable.

7. The Committee may exercise as to all of such bonds, debentures, preferred stock, claims and rights, all rights incidental to the ownership thereof, and any and all rights and powers appertaining to the legal holders of said securities. The Committee is hereby authorized and empowered at any time and from time to time (1) to foreclose or otherwise enforce any and all mortgages or other liens upon the property or any part thereof of the Company; (2) to consent to the issuance and delivery to....., of.....Bonds of the Company equal in amount to the unsecured open indebtedness of the Company to the said.....*pro rata* to the present issue of said bonds, but if the total amount of such bonds is not sufficient for this purpose, then to make *pro rata* contributions of deposited bonds, if necessary, to accomplish the desired result; (3) to subordinate any mortgage or lien to

any other mortgage or lien upon all or any part of the property of the Company, to compound, pay, or otherwise satisfy any such mortgage or other lien, and to receive in consideration therefor the stock, bonds, or other securities, of any corporation or corporations; (4) to consent that any mortgage or other lien upon part of the property of the Company may be made a lien upon property of the Company not now subject to such lien, should such consent be necessary to procure loans for the Company; (5) to sell from time to time all or any part of the property of the Company whether real or personal at such times and in such manner whether at public or private sale as in the discretion of the Committee shall seem just and proper, and itself at any such sale to buy in the property on behalf of the Depositors; (6) to exchange from time to time all or any part of said property, taking in return therefor other property either real or personal, including stocks, bonds and other securities; (7) to organize a new corporation to purchase all or any part of the property of the Company; (8) to operate all or any part of the property as a manufacturing or as a real estate proposition or otherwise, and to lease the same, to improve all or any part of the real estate, construct, alter or repair buildings, repair, add to, alter or discontinue the power plant; (9) to take all necessary or proper steps from time to time to elect or cause to be elected directors of the Company, appoint or cause to be appointed officers thereof, and to hire and discharge or cause to be hired or discharged all employees of the Company of whatever rank and to determine their compensation; (10) to become parties to a new voting trust agreement relating to either the preferred or common stock of the Company, to consent to amendments of the present voting trust agreement under which the common stock of the Company has been deposited and from time to time to appoint new trustees under any such trust agreements; (11) to consent on behalf of the Depositors to any of the acts and things hereinbefore mentioned, and to take such steps and execute such papers as may be either necessary or proper to carry out any of the foregoing powers.

8. In addition to the foregoing powers the Committee at any time and from time to time may purchase or otherwise

acquire or enter into agreements for the purchase or acquisition of any of said securities or of any of the obligations or of any of the property of the Company or of any other company or corporation now or hereafter organized, as the Committee in its uncontrolled discretion may deem necessary for the protection or advancement of the interests of the Depositors; and may sell or exchange or enter into agreements for the sale or exchange of any of the said securities deposited hereunder or of any shares of stock, bonds, obligations, or other securities or other property purchased or acquired by the Committee for such considerations and upon such terms and conditions as the Committee in its uncontrolled discretion may deem advantageous and for the interests of the Depositors. Any such sale or exchange may provide for the sale or exchange of the deposited securities for cash or property or in consideration for shares of stock, bonds, obligations, or other securities of the Company and/or of any other company or corporation now or hereafter organized, or partly for cash and partly for any such shares of stock, bonds, obligations or other securities or property, upon such terms and conditions as the Committee may in its uncontrolled discretion determine, and any such sale or exchange made by the Committee in good faith shall be final and conclusive upon the Depositors. The net proceeds of any such sale shall be distributed among the depositors subject to the provisions of this agreement and in accordance with the provisions and terms of a plan of reorganization or for the management and disposal of the properties of the Company which shall be adopted by the Committee and by those Depositors who do not withdraw their securities upon the conditions hereinafter set forth.

9. The Committee is fully authorized and empowered, in the name of the Committee as owner and holder of said securities or otherwise, at any time and from time to time, to take or institute or cause to be taken or instituted all such suits, actions or proceedings, whether legal, equitable, in bankruptcy or otherwise, for the recovery of the principal of and/or interest upon any class or classes of said securities, or for any other purpose which might affect the said Company or any of its property or any of the said securities, to intervene in or

become a party to, or exercise control over any suits, actions or proceedings, to procure the appointment of Receivers or Trustees in Bankruptcy, to give such directions, to execute such papers, including powers of attorney, releases, waivers, acquittances in full or in part of any claims, and to do, execute and perform any and all such acts and things as to it shall seem necessary or proper for the purpose of perfecting its title to any security endorsed or assigned to it or its nominee, or deposited with the Depositary, or of protecting or enforcing the interests and rights of the depositors or otherwise for the purposes of this agreement. It may demand, collect and receive any and all amounts of cash, securities or other property that at any time may be payable or receivable upon or in respect of the deposited securities, either as principal or interest, and whether upon any reorganization or readjustment of the Company, or disposition of its properties or otherwise, and may distribute the same among the depositors subject to the provisions of this agreement and in accordance with the provisions and terms of a plan either of reorganization or for the management and disposal of the properties of the Company, which shall be adopted or approved by the Committee; it may make all requests and demands which the Committee may deem proper and may exercise in its uncontrolled discretion in respect to the deposited securities all rights and powers vested in or conferred upon the owners and holders of such securities, by the term of any of said securities or of any instruments or writings creating or representing said securities, or by the Laws of the State of New York, or otherwise.

10. The Committee may make such expenditures and incur such indebtedness, obligations and liabilities as it, in its uncontrolled discretion, may deem judicious and expedient in order to carry out fully and effectively the purposes of this agreement.

11. The deposited securities and any property purchased or acquired by or on behalf of the Committee shall be charged with the payment of the compensation of the Committee and its expenses (including as part of the Committee's expenses wherever these expenses are referred to in this agreement, the compensation and expenses of the Depositary and of its coun-

sel), and also with the payment of the indebtedness, obligations and liabilities of the Committee; but recourse therefor shall be had only against the deposited securities, and nothing contained in this agreement shall obligate any Depositor to contribute or pay any sum of money, except only as hereinafter provided.

12. The Committee shall have power and may at any time and from time to time, at public or private sale, purchase or cause to be purchased or may contract to purchase or in any manner acquire or cause to be acquired, and whether before or after the preparation or the adoption and approval by it of any plan or agreement of reorganization or readjustment of the properties of the Company, as hereinafter provided, and for such considerations and upon such terms and conditions and subject to such restrictions as the Committee in the exercise of its uncontrolled discretion may deem expedient, all or any of the securities or all or any part of the property of the Company, or any other property which in the judgment of the Committee may be advantageously used by or in connection with the business of the Company, or any property the acquisition of which the Committee may deem advantageous or advisable; but the Committee shall not be bound to make any such purchase or contract to purchase, and in case of any purchase, the deposited securities or any of them may be used in payment or in part payment of the purchase price thereof, or the purchased property or the deposited securities or any other property acquired by or on behalf of the Committee under any of the provisions of this agreement may be pledged or charged for the purpose of procuring funds to make any such payment or to obtain such moneys as may be necessary to discharge prior liens on the property purchased and to pay the expenses of sale.

13. The Committee may deal with the property or any part thereof at any time purchased or acquired by it or on its behalf under the authority conferred by any of the provisions of this agreement in like manner as it is hereby authorized to deal with or in respect of the deposited securities or any of them, and may transfer such property or any part thereof, or cause the same to be transferred into the name of the Committee or its

nominees; may exercise any and all rights, powers and privileges vested in the owners and holders of the said property as such, and as the owners thereof or otherwise may take and institute or cause to be taken and instituted, or intervene in or become a party to, or exercise control over such suits, actions or proceedings, whether legal or equitable, give such directions, execute such papers and do and perform such acts and things either under the instruments securing the said property or any part thereof or otherwise as the Committee shall deem judicious or proper, whether to enforce the security given for any such property, or to procure the payment of the principal or interest of any such property, or otherwise to protect or enforce the rights and interests of the Depositors; may demand, collect and receive all amounts that any time may be due or owing or payable upon or in respect of any such property, and whether for principal or for interest or otherwise; may elect to have the principal of any bonds, debentures, notes or other obligations so acquired by it become due and payable, and may withdraw any such election; may use any bonds, debentures, notes or other obligations or any shares of stock or rights theretofore acquired by or deposited with the Committee in payment or in part payment of the purchase price thereof; may pledge or charge the purchased property and any property held or acquired by or on behalf of the Committee under the authority of any of the provisions of this agreement, or any part or portion thereof, for the purpose of procuring funds to make any such payment or to obtain such moneys as may be necessary to discharge prior liens upon property purchased, and to pay the expenses of sale; may exercise all powers conferred upon the holders of any bonds, debentures, notes or other obligations or any shares of stock or rights acquired by or deposited with the Committee under the authority of any of the provisions of this agreement under the terms of the instruments securing the same or otherwise; and may vote or cause to be voted or otherwise exercise the rights of owner upon or in respect of all shares of stock, whether preferred or common or other securities, acquired by the Committee under the authority of any of the provisions of this agreement.

14. The Committee may at any time and from time to time,

whether before or after the preparation or adoption and approval by it of any plan or agreement of reorganization or readjustment of the Company, its affairs and properties, as hereinafter provided, in such manner and at such price or prices and upon such terms and conditions as it may in its uncontrolled discretion determine, sell, exchange, assign, transfer, set over or deliver any or all of the property held or purchased by the Committee under the authority conferred upon it by any of the provisions hereof, and generally may deal with any such property so held purchased or acquired hereunder as it shall deem most advantageous in the interests of the Depositors. Any property held, purchased or acquired by the Committee under the authority conferred by any of the provisions of this agreement or any part of such property, may, after the preparation or adoption or approval of a plan and agreement of reorganization or readjustment by the Committee, as hereinafter provided, be deposited thereunder or otherwise subjected thereto, and be held and disposed of by the Committee or the managers under any such plan or agreement in the manner therein provided and subject to the terms and conditions thereof.

15. For the purpose of securing funds necessary for the payment of the expenses and liabilities of the Committee, or to pay liens, charges, demands or assessments upon or in respect to, or otherwise to protect the matters by this agreement committed to their charge or any of them, and in particular the property and securities or any portion thereof at any time purchased or acquired by or on behalf of the Committee under the authority conferred by any of the provisions of this agreement, the Committee may borrow and use such sums of money upon such terms and subject to such conditions as in its discretion it may deem wise and necessary to protect the interests of the Depositors, and for that purpose and to secure the repayment of such sums as may be so borrowed it may pledge or hypothecate any part or all of the deposited bonds, debentures, preferred stock, and rights, or any property purchased or acquired by or on behalf of the Committee under the authority conferred by any of the provisions of this agreement, and in particular it may so raise the necessary funds for new con-

struction or the making of alterations and repairs and the development generally of the property of the Company; and if any sums shall be collected by the Committee by or upon the deposited claims, bonds, debentures, preferred stock, or rights, the Committee may apply such moneys to the payment of any sum so borrowed, and to the payment of its compensation, expenses and liabilities; and in extension of the powers herein conferred and not by way of limitation thereof the Committee may enter into an agreement with any lender that the rentals or other proceeds arising from the use of all or any of the property held, purchased or acquired by the Committee hereunder, after the payment of necessary operating expenses including the expenses of the Committee, shall be applied to the payment of his or its loan, or should the lender now own any mortgage or other lien upon the property of the Company or any part thereof, the Committee may agree that any such rentals or other proceeds after the payments last hereinbefore specified shall be applied to the payment and satisfaction of the lender's mortgage or other lien before any part of such rentals or other proceeds shall be applied to any other purpose, or that property not now subject to any such mortgage or other lien, shall become subject thereto; but the Committee shall have no power to make the Depositors individually liable for any amounts so borrowed, or for any obligations incurred by it, except as hereinafter provided.

16. On borrowing money, as herein authorized, whether upon pledge or not, the Committee may give to the lender its promissory note or notes under the hand of its Chairman or other officer thereof by resolution authorized, for the sum so borrowed. The Committee may, in writing, direct the Depository to hold the deposited securities or any designated part thereof, as security for the repayment of any money advanced or to be advanced to the Committee, in which case such securities shall be, and shall be held by the Depository as security for such advances, with the same effect as if they were actually deposited with the person making such advances as security for the payment thereof.

17. In general, the Committee may do all such acts and things whether herein specifically set forth or not as the Com-

mittee in its discretion may deem judicious and proper in order fully and effectually to carry out the purposes of this agreement.

18. The Committee shall have power, if and whenever in its judgment it shall become advisable so to do, to prepare, either by itself or acting in conjunction with any committee or committees representing the holders of bonds or of shares of the capital stock of the Company or of its other obligations, and to adopt a plan and agreement for the reorganization or readjustment of the Company, its affairs and properties, and including any one or more subsidiary companies or any of the other interests of the Company, or the Committee may approve and adopt any plan and agreement for such reorganization or readjustment, although not prepared by it.

19. Any such plan and agreement of reorganization or readjustment may provide:

a. For the sale, barter or exchange of the deposited securities or any of them.

b. For the purchase or acquisition or for sale or other disposition of all or any part of the property of the Company or of any subsidiary company at any public or private sale or for the purchase or acquisition or for the sale or other disposition of any one or more of the Company's subsidiaries or interests.

c. For the sale or re-sale of any property purchased or acquired by or on behalf of the Committee under any of the provisions of this agreement or any part of such property, and for the readjustment of any indebtedness to which said property or any part thereof may be subject.

d. For the purchase or acquisition of any other property which in the judgment of the Committee may be advantageous for the preservation, improvement, development, operation or protection either of the property of the Company or of any other property the purchase or acquisition whereof may be provided for in, or contemplated or authorized by, any such plan and agreement.

e. For the organization of such corporation or corporations as may be deemed suitable, and for the acquisition in any manner by such corporation or corporations or by the Company

or by any other corporation, directly or indirectly, through stock or certificates representative thereof or otherwise, of the property of the Company or of any portion of such property, or of any other property.

f. For the issue, disposition and distribution of all or any of the shares of stock, of such classes, and of such rights and priorities as the Committee may deem proper, and bonds, debentures, notes or other securities or evidences of indebtedness of any such corporation or corporations, or in lieu of the distribution of shares of stock or securities, of certificates representing a beneficial interest therein.

g. For the raising of any sums in cash deemed by the Committee in its uncontrolled discretion to be necessary or expedient for any of the purposes of the reorganization or readjustment of the Company, its affairs and properties.

h. For the continuance of the present Company with such adjustment of its obligations and changes in its management as in the discretion of the Committee seem necessary.

i. For the institution of a voting or other trust to secure a measure of permanence in the management of the Company.

j. For the operation by the Committee, through a new corporation organized by the Committee, or otherwise, of all or any part of the property of the Company or of any of its subsidiaries, whether now held or hereafter to be acquired by the Company or by the Committee, as a manufacturing or as a real estate proposition, or otherwise; and for the improvement of the real estate, the construction, alteration or repair of buildings, or the operation or discontinuance of the power plant.

20. For the purpose of carrying out the terms of any such plan and agreement, the Committee, as the agent and attorney of the Depositors or otherwise may sell, exchange and deliver all the deposited securities or any of them, and may sell or resell, assign, transfer, deliver, convey and set over the property or any part thereof purchased or acquired by or on behalf of the Committee under the authority conferred by any of the provisions of this agreement.

21. Any sale or exchange of the deposited securities and any purchase or acquisition or sale or disposition of all or any of the

property or properties above mentioned and which shall be provided for in or authorized by any such plan and agreement shall be made for such consideration and upon such terms and conditions as shall be expressed in said plan and agreement.

22. Any such plan and agreement of reorganization or readjustment may be prepared or approved and adopted by the Committee, either before or after a sale (under foreclosure or otherwise) or a contract for the sale of the property of the Company or any part thereof.

23. Any such plan and agreement may constitute and appoint managers of the reorganization or readjustment under it, and provide for their compensation and expenses, and the members of the Committee or any of them may act as such managers or may be members of any committee thereby constituted or therein referred to, and may make provision for the payment of the compensation and expenses of the Committee, and under any such plan and agreement the payment thereof, as well as of all indebtedness, obligations and liabilities incurred by the Committee, may be charged upon the securities and property or any part of the securities or property at any time subject to such plan and agreement. Any such plan and agreement may contain any terms and provisions and confer upon the Committee or upon any other committee under such plan and agreement, or if such plan and agreement shall constitute managers of said reorganization or readjustment, on the managers thereunder, any powers and discretion which the Committee in its uncontrolled discretion may deem proper or expedient, and although not expressed or contemplated in this agreement, and may impose such conditions on participation therein or in the benefits thereof as the Committee may, as aforesaid, deem wise; and full power and discretion in these respects is conferred upon the Committee.

24. Whenever the Committee shall have prepared or approved and adopted any such plan and agreement, a copy thereof shall be filed with the Depository, and thereupon a brief notice of the fact of such preparation or approval and adoption and filing shall be mailed to each depositor postage prepaid at his address appearing upon the books of the Depository, and may, if the Committee deems it necessary, be pub-

lished by the Committee at least twice in each week for two successive weeks in such two newspapers of general circulation published one in the....., and the other in the....., as the Committee shall select; and the mailing, or publication, of said notice shall be conclusive notice as of the date of mailing or of its first publication to all the Depositors and to all holders of certificates of deposit of the preparation or approval and adoption of such plan and agreement by the Committee and of the filing of a copy thereof with the Depository.

25. Any holder of a certificate of deposit may at any time within the period of thirty days commencing on the date of the mailing as hereinbefore provided or of the first publication of such notice of the preparation or approval and adoption of any plan and agreement by the Committee, upon surrender of his certificate of deposit with a properly executed transfer thereof to the Depository, and upon prior payment to the Depository, should the Committee so require, for the account of the Committee, of such an amount as the Committee may, in its sole and uncontrolled discretion, fix as a fair contribution on his part (not exceeding % of the par value of the securities deposited by him) towards the expenses of the Committee, withdraw from this agreement. The Committee may also require any holder of any certificate of deposit so withdrawing, as a condition of such withdrawal, to pay to the Committee such *pro rata* share as the Committee may prescribe of any advances which may have been made by or to the Committee for purposes other than its expenses, in which event the withdrawing certificate holder shall receive such evidence of interest in such advances as the Committee, in its sole and uncontrolled discretion, may prescribe. Upon such payments being made if required, any holder of a certificate of deposit shall be entitled to receive the securities represented by his certificate of deposit. Upon such withdrawal, and without further act, holders of certificates of deposit shall be fully relieved from the obligations of this agreement and shall cease to have any rights hereunder, except as may be expressed in such evidence of interest, if any, in the Committee's advances as they may receive from the Committee. Holders of certificates of deposit

who do not so withdraw within said period of thirty days shall be conclusively and finally deemed for all purposes to have irrevocably waived the right of withdrawal hereby given to them, and such plan and agreement shall be binding on all holders of certificates of deposit who shall not have so withdrawn their deposited securities, all of whom shall be conclusively and finally deemed for all purposes to have assented to the said plan and agreement and the terms thereof, whether they received actual notice, or not, and be irrevocably bound and concluded by the same. No holder of any certificate of deposit shall, at any time prior to the mailing, or first publication of such notice of the preparation, or approval and adoption by the Committee of a plan of reorganization and readjustment be entitled to withdraw from this agreement or to receive the deposited securities represented by the certificate of deposit held by him, except as provided by the next succeeding paragraph of this agreement and except also in the event of the amendment or termination of this agreement as provided by Articles Eighth and Ninth hereof and then only subject to the conditions and limitations in said respective articles provided.

26. In the event that no notice of the preparation or approval and adoption of any plan and agreement of reorganization or readjustment shall be given by the Committee within five years from the date of this agreement by the mailing of or by the first publication of such notice within said period of five years from the date hereof, any holder of a certificate of deposit may, after the expiration of said period of five years, withdraw from this agreement upon surrender of his certificate of deposit, with a properly executed transfer thereof to the Depositary and upon prior payment to the Depositary, should the Committee so require, for the account of the Committee, of such sums as the Committee is empowered hereunder to fix in case of a withdrawal by a Depositor of his securities within thirty days of the mailing or publication of notice of the adoption of a plan, and thereupon he shall be entitled to receive the securities deposited by him and described in his certificate of deposit to the amount represented by his certificate of deposit; provided, however, that if any notice of the preparation or approval and adoption of any such plan and agreement

or reorganization or readjustment shall be given by the Committee in the manner hereinbefore provided after the expiration of said period of five years from the date of this agreement, no holder of any certificate of deposit who shall not, prior to the date of the mailing or of the first publication of such notice have withdrawn from this agreement as provided in this paragraph, shall thereafter be entitled to withdraw from this agreement except within the period of thirty days commencing on the date of the mailing or of the first publication of such notice as hereinbefore provided.

27. The Committee, as at any time constituted, and notwithstanding any vacancy, shall have all the powers, rights and interests of the Committee as originally formed. The Committee may from time to time add to its numbers by election by the votes of a majority of its members as from time to time constituted, of an additional member or additional members, not to exceed five in number, and the member or members so elected shall have all the powers of the Committee under this agreement, and, together with those herein named or their successors, shall constitute such Committee, with the like force and effect as if they were specifically herein named as parties of the second part. Any member of the Committee may resign by filing written notice of his resignation with the Chairman of the Committee, or with, the Depository, or any successor Depository. In case at any time a vacancy shall occur in the Committee by death, resignation or otherwise, such vacancy may, but need not, unless the number of said Committee would thereby be reduced to less than two, be filled by a majority of the other members of the Committee by the selection and appointment of a successor to fill such vacancy. Should the number of the Committee at any time be reduced to less than two, through death, resignation or otherwise, one vacancy may be filled by a majority in amount of the depositors. Any successor member of the Committee shall have and may exercise all the powers and authority under this agreement previously possessed by the person in whose place he shall have been elected or appointed, and to the same extent and effect as if he were herein named as one of the Committee.

28. The Committee may act by a majority of its members either at a meeting or in writing without a meeting. Any member of the Committee may vote or act by proxy (who may, but need not, be another member of the Committee), and the vote or act of such proxy shall be as effective as the vote or act of such member appointing such proxy. Subject to the provisions hereof, the Committee may in its absolute discretion fix its rules of action and procedure, and may elect a Chairman of the Committee and a Secretary, and may define their powers and duties. The Committee may limit or extend the time within which, and fix the conditions under which, deposits may be made under this agreement, and may impose penalties in respect to deposits received after such limit shall have expired, and either generally or in special instances may in its discretion, after the time limit has expired, accept deposits of securities or otherwise obtain the assent of the holders of any securities to this agreement and the terms and conditions thereof, and such power may be exercised by the Committee at any time during the continuance of this agreement. It may determine in its uncontrolled discretion whether or not sufficient securities have been deposited hereunder for this agreement to become operative, and the Committee's written declaration filed with the Depository that this agreement has become operative shall be conclusive and binding upon all Depositors hereunder. The Committee may also at any time return to the Depositors any given class of securities deposited hereunder by such Depositors, upon such terms as to the Committee seems just, and thereafter the Committee shall act hereunder only for the Depositors of the securities of the class or classes not so returned. The Committee may appoint subcommittees and delegate to them specific powers. The written assent of any member to any act, appointment, resolution, or consent shall have the same effect as if such member had voted for such act, appointment, resolution or consent at a meeting of the Committee; and neither the Committee nor any member thereof shall be under any obligation to take any action which shall in his or their opinion render him or them personally liable unless the assenting depositors shall give him or them good and sufficient indemnity.

29. The Committee shall have the power to employ such Depositaries, counsel, attorneys, agents or employees as in its judgment shall be necessary or useful, and to pay them such compensation as it shall deem proper, and shall be entitled to a reasonable compensation for its services; any plan and agreement of reorganization or readjustment may provide for the payment of all such compensation. Neither the Committee nor any of its members nor the Depositary shall be personally liable for any act or omission of any agent, attorney or employee selected in good faith, nor for any error of judgment or mistake of law, nor for anything other than willful malfeasance. The Depositary in all things hereunder shall be subject to the directions of, and be responsible to, the Committee alone, and shall be fully protected in acting upon the instructions of the Committee. No member of the Committee shall be liable for the act or acts of any other member, nor for anything but his own willful malfeasance.

30. Any member of the Committee and any firm or corporation of which he may be a member or officer, and the Depositary, its officers and agents, may be or become pecuniarily interested in any property or matters which are or may become the subject of this agreement or of any plan and agreement of reorganization or readjustment which the Committee may prepare or approve and adopt as herein provided, and may contract with the Committee or be a member or manager of any other committee or of any syndicate which may contract with the Committee or be formed in contemplation of or in connection with any plan and agreement of reorganization or readjustment of the Company, its affairs and properties.

31. The Committee is hereby authorized and empowered to construe this agreement, and its construction of the same, made in good faith, shall be final, conclusive and binding upon the Depositors and upon the holders of all certificates of deposit. It may supply defects and omissions herein, or may make such modifications as it in its judgment may deem expedient or necessary to carry out the same properly and effectively, and its judgment, as to such expediency or necessity, shall be final. The Committee shall have power, whenever in its judgment it may be advisable, to amend this agreement.

All amendments shall be filed with the Depositary; but, if in the judgment of the Committee, which shall be conclusive and binding, any such amendment shall materially affect the rights of holders of certificates of deposit, notice of such filing shall be given to all Depositors by mailing, postage prepaid, to the address of the Depositor appearing on the books of the Depositary, or by publication twice in each week for two successive weeks in such two newspapers of general circulation published, one, in the.....and the other in the, as the Committee shall select. Any holder of a certificate of deposit may at any time within two weeks after the mailing or the first publication of such notice, subject to the conditions of Article Fourth relating to the right of withdrawal and upon the surrender of his certificate of deposit properly endorsed in blank to the Depositary, withdraw from this agreement, and thereupon he shall be entitled to receive securities of the class deposited by him and described in his certificate of deposit to the amount represented by his certificate of deposit. Holders of certificates of deposit so withdrawing shall, upon such withdrawal, without any further act, be fully relieved from the obligations of this agreement, and shall cease to have any rights hereunder. Holders of certificates of deposit who do not so withdraw within said period of two weeks shall be conclusively and finally deemed for all purposes irrevocably bound and concluded by all such amendments, and whether or not they received actual notice of such amendments or of the filing thereof.

32. If for any reason the Committee shall consider it expedient at any time to terminate this agreement it may do so, giving like notice of its election so to do as hereinbefore provided in respect of the amendment of this agreement. In the event of such termination of this agreement, holders of certificates of deposit shall, upon making the payments required by Article Fourth in case of the exercise of the right of withdrawal, and on surrender of their certificates of deposit properly endorsed in blank to the Depositary, be entitled to the delivery of securities of the class deposited by them and described in the certificate of deposit to the amount represented by their certificates of deposit.

33. Upon the termination of this agreement, either by the election of the Committee as aforesaid or upon the accomplishment of the purposes thereof and after the payment in full of the compensation and expenses of the Committee and also of all of its indebtedness, obligations and liabilities, the money or other property acquired by or on behalf of the Committee and not previously or simultaneously sold, contracted to be sold or otherwise disposed of by the Committee, shall be distributed among the holders of the outstanding certificates of deposit issued under this agreement in accordance with such reasonable regulations as the Committee may prescribe and upon surrender to the Depositary of their respective certificates of deposit properly endorsed in blank.

34. The Committee shall keep books of account of its receipts and disbursements, and a record of its proceedings, and upon the termination of its duties, its accounts, including the account of its expenses and disbursements, or a duplicate thereof shall be filed with the Depositary hereunder, and thereupon the Committee shall be discharged from all its duties and obligations. The Committee may thereupon give notice of the filing thereof by mailing or by publication as provided herein with reference to amendments to this agreement. Unless legal proceedings impeaching the correctness of such accounts shall be duly commenced within thirty days after the date of mailing or of the last publication of such notice, such statement of accounts as against all parties interested therein shall be conclusively presumed to be in all respects correct.

35. Holders of certificates of deposit by the receipt of any shares of stock, securities, cash or other property distributed by the Committee and the surrender of their certificates of deposit, shall be conclusively deemed to have released and discharged the Committee and the Depositary from all liability and accountability of every kind, character and description whatsoever.

36. No enumeration of special powers by any of the provisions of this agreement shall be construed to limit any grant of general powers contained in or conferred by any of the provisions hereof or to restrict the Committee to a method or plan of dealing with the property and assets of the Company.

37. The Committee, by the execution and delivery of this agreement, is not under any obligation, legal or equitable, expressed or implied, to any holder of securities who shall not deposit the same hereunder, nor to any person whomsoever other than the holders of certificates of deposit issued in accordance with the terms of this agreement.

38. This agreement may be executed in as many counterparts as desired, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument.

39. This agreement and all the provisions thereof shall extend to and be obligatory upon the parties hereto, and their and each of their heirs, executors, administrators, successors, successors in office and assigns respectively.

40. Whatever shall be done under this agreement shall be subject to the stipulations herein contained for the proportionate benefit and advantage of the Depositors according to the amount of said securities held by them respectively.

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument the day and year first above written.

.....

Committee.

PAR VALUE AND CLASS OF OBLIGATIONS DEPOSITED
 HEREUNDER

Bonds	Debentures	Preferred Stock and Rights to Common Stock
\$	\$	\$

SCHEDULE A

CERTIFICATE OF DEPOSIT OF BONDS

Deposited under an agreement dated....., by and between....., Committee, and Holders of..... Bonds of the.....and holders of debentures, preferred stock, and other securities of or claims against the said Company, as parties thereto.

No..... \$.....

The.....hereby certifies that it has received from.....bonds of the issue aforesaid of the face value of principal of.....dollars (\$.....) (with all coupons maturing on and after....., attached), subject to the terms and conditions of and deliverable as stated in the above mentioned agreement. The holder hereof assents to and is bound by the provisions of the said agreement by receiving this certificate, and is entitled to receive all the securities, benefits and advantages to which the depositor of said bonds is or may become entitled pursuant to the provisions of said agreement.

The interest represented by this certificate is assignable, subject to the terms and conditions of said agreement, by transfer upon books kept by this Company for that purpose by the holder hereof in person or by attorney upon the surrender of this certificate duly endorsed for transfer.

Dated,.....

.....

Depositary.

By.....

Vice-President.

.....

Assistant Secretary.

(Reverse)

For value received,.....hereby sell, assign and transfer unto....., the within certificate,

and all rights and interests represented thereby, and do hereby irrevocably constitute and appoint.....attorney, to transfer the same on the books of said Trust Company, with full power of substitution in the premises.

Dated..... [L. s.]

In the Presence of

.....

NOTICE: The signature to this assignment must correspond with the name as written upon the face of the certificate in every particular, without alteration or enlargement, or any change whatever.

SCHEDULE B

CERTIFICATE OF DEPOSIT OF DEBENTURES
OF

.....

Deposited under an agreement dated....., by and between....., Committee, and the Holders ofBonds of the....., and Holders of Debentures, Preferred Stock, and other securities of or claims against the said Company, as parties thereto.

No..... \$.....

The.....hereby certifies that it has received from.....debentures of the..... Company, dated....., of the principal sum ofdollars (\$.....), subject to the terms and conditions of and deliverable as stated in the above mentioned agreement. The holder hereof assents to and is bound by the provisions of the said agreement by receiving this certificate, and is entitled to receive all the securities, benefits and advantages to which the depositor of said debentures is or

may become entitled pursuant to the provisions of said agreement.

The interest represented by this certificate is assignable, subject to the terms and conditions of said agreement, by transfer upon books kept by this Company for that purpose, by the holder thereof in person or by attorney upon the surrender of this certificate duly endorsed for transfer.

Dated,.....

.....

Depository.

By.....

Vice-President.

.....

Assistant Secretary.

(Reverse.)

For value received,.....hereby sell, assign and transfer unto.....the within certificate and all rights and interests represented thereby, and do hereby irrevocably constitute and appoint.....attorney, to transfer the same on the books of said Trust Company, with full power of substitution in the premises.

Dated,.....

.....[L. s.]

In the presence of

.....

NOTICE: The signature to this assignment must correspond with the name as written upon the face of the certificate in every particular, without alteration or enlargement, or any change whatever.

SCHEDULE C

CERTIFICATE OF DEPOSIT OF STOCK

(Preferred Stock and Rights to Common Stock)

OF

.....COMPANY.

Deposited under an agreement dated....., by and between....., Committee, and the Holders ofBonds of the..... Company, and Holders of Debentures, Preferred Stock, and other securities of or claims against the said Company, as parties thereto.

No..... \$.....

The.....hereby certifies that it has received from..... shares of the Preferred Stock (Assignment of rights to..... shares of the Common Stock under the plan of reorganization dated..... of the.....Company, being Certificates No.....endorsed in blank and being subject to the terms and conditions of the above mentioned agreement. The holder hereof assents to and is bound by the provisions of the said agreement by receiving this certificate, and is entitled to receive all the securities, benefits and advantages to which the depositor of said stock and rights is or may become entitled pursuant to the provisions of said agreement.

The interest represented by this certificate is assignable subject to the terms and conditions of said agreement, by transfer upon books kept by this Company for that purpose, by

the holder thereof in person or by attorney upon the surrender of this certificate duly endorsed for transfer.

Dated

.....

Depository.

By

Vice-President.

.....

Assistant Secretary.

(Reverse.)

For value received,..... hereby sell, assign and transfer unto....., the within certificate, and all rights and interests represented thereby, and do hereby irrevocably constitute and appointattorney, to transfer the same on the books of said Trust Company, with full power of substitution in the premises.

Dated

.....[L. s.]

In the Presence of

.....

NOTICE: The signature to this assignment must correspond with the name as written upon the face of the certificate in every particular, without alteration or enlargement, or any change whatever.

SCHEDULE D

CERTIFICATE OF DEPOSIT OF CLAIMS
(Other than Bonds and Debentures)

AGAINST

.....COMPANY

Deposited under an agreement dated.....

by and between.....
, Committee, and the Holders of
Bonds of the.....
Company, and Holders of Debentures, Preferred
 Stock, and other securities of or claims against the said Com-
 pany, as parties thereto.

No..... \$.....
 The.....hereby cer-
 tifies that it has received from.....
 an assignment of a claim against the.....
 Company in the principal sum of \$.....which
 claim was payable on the.....day of.....,
, and is of the following character:

.....
 subject to the terms and conditions of the above-mentioned
 agreement. The holder hereof assents to and is bound by the
 provisions of the said agreement by receiving this certificate,
 and is entitled to receive all the securities, benefits and ad-
 vantages to which the depositor of said claim is or may become
 entitled pursuant to the provisions of said agreement.

The interest represented by this certificate is assignable,
 subject to the terms and conditions of said agreement, by
 transfer upon books kept by this Company for that purpose,
 by the holder thereof in person or by attorney upon the sur-
 render of this certificate duly endorsed for transfer.

Dated.....

 Depositary.

By.....
 Vice-President.

 Assistant Secretary.

(Reverse)

For value received,.....
 hereby sell, assign and transfer unto.....
 the within certificate, and all rights and interests represented

thereby, and do hereby irrevocably constitute and appoint
attorney, to transfer the same
 on the books of said Trust Company, with full power of sub-
 stitution in the premises.

Dated,.....
[L. s.]

In the presence of

.....

NOTICE: The signature to this assignment must correspond with the name as written upon the face of the certificate in every particular, without alteration or enlargement, or any change whatever.

Deposit Agreement—Option to Purchase Stock

DEPOSIT AGREEMENT dated.....,
 between.....(hereinafter called Mr. X.),
, and such other holders of the
 preferred stock of.....Corporation
 as shall become parties hereto in the manner hereinafter pro-
 vided (hereinafter called the Depositors), and.....
 COMPANY (hereinafter called the Depository),.....

Mr. X. is the owner and holder of.....shares,
 of the par value of.....dollars each, of preferred stock of
Corporation (hereinafter called the corpo-
 ration).

In addition to said preferred stock held by the Depositor, the Corporation has issued and there are now outstanding
 shares of its preferred stock.

The Corporation contemplates the purchase or retirement of its outstanding preferred stock at the price of.....dollars per share and Mr. X. has agreed with the Depositors for the benefit of.....and the other Depositors, that one-half of all moneys received by Mr. X. or any other subsequent holder of said.....shares of preferred stock or any part thereof upon such purchase or retirement by..... Corporation, shall be applied as hereinafter provided to the purchase, at the price of \$.....per share, of such other of the

preferred stock of the Depositors as is not purchased or retired by the.....Corporation itself.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, That the parties hereto have agreed among each other as follows:

1. The Depositors agree forthwith to deposit hereunder all shares of preferred stock of the..... Corporation, owned by him; and any holder of preferred stock of.....Corporation other than the..... shares held by Mr. X., may become a party to this agreement and thereby a Depositor by depositing with the Depositary at any time prior to....., the certificates for his preferred stock properly endorsed in blank and stamped for transfer; provided, however, that the period within which such deposits may be made may be extended for such period as Mr. X. andmay agree upon and certify in writing to the Depositary; and provided further that no deposit shall be made after the Depositary shall have received any moneys from.....Corporation or from Mr. X. pursuant to the provisions of paragraph 3 or paragraph 8 hereof. All preferred stock so deposited shall be held by the Depositary in an account which shall be called "Depositors Stock Account." Upon such deposit each Depositor shall receive from the Depositary a receipt substantially in the following form:

Deposit Receipt

for

Preferred Stock of.....Corporation
in Depositors' Stock Account,

Under Deposit Agreement dated.....,

between

X., and certain other holders of preferred stock of.....Corporation, and the undersigned as Depositary.

The undersigned Depositary hereby certifies that it

has received from..... cer-
 tificates for..... shares of preferred
 stock of..... Corporation for deposit in the
 Depositors' Stock Account under and subject to the
 terms and conditions stated in the above mentioned
 Deposit Agreement. The registered holder hereof assents
 to, and is bound by, the provisions of said Deposit Agree-
 ment by receiving this receipt and is entitled to the
 benefits to which the Depositor of said stock is or may
 become entitled to pursuant to the terms and conditions
 of said Deposit Agreement, an original counterpart of
 which is on file and open for inspection at the office of
 the undersigned Depository in the City of.....
 Said Deposit Agreement provides for its termination on
, or upon the earlier happening of certain
 events specified therein.

The interest represented by this receipt is assignable
 subject to the terms and conditions of said Deposit
 Agreement by transfer on the books kept at the office
 of the Depository for that purpose, by the registered
 holder hereof in person or by attorney, and the notation of
 such transfer hereon by the Depository, upon presentation
 of this receipt for that purpose, and payment of the
 transfer tax and other charges, if any, in connection with
 such transfer.

.....
 Depository.

By

Dated

(Reverse Side)

For value received.....
 hereby sells, assigns and transfers unto.....
 the within Deposit Receipt and all rights and interest
 represented thereby, and do hereby irrevocably constitute
 and appoint
 true and lawful attorney to transfer the same on the

books of.....Trust Company, with full power of substitution.

Dated.....

In the presence of.....

NOTE: No writing under these columns except by the Depository:

		Signature of
Date of Transfer	Name of Transferee	Depository

Notation of payments under Paragraph 6 or said Deposit Agreement.

		Signature of
Date of Payment	Amount Paid	Depository

The interest represented by said receipts may be assigned subject to the terms and conditions of this agreement only by transfer on the books kept at the office of the Depository for that purpose by the registered holders thereof in person or by attorney, and the notation of such transfers on such receipts by the Depository, upon presentation of the receipts for that purpose and payment of the transfer taxes and, if the Depository shall so require, a charge not exceeding ten cents for each share of preferred stock at the time represented by such certificate and not exceeding in the aggregate one dollar for each transfer. All the transferees of such receipts shall be parties to this agreement and shall be included within the term "Depositors."

2. Mr. X. has simultaneously with the execution of this agreement deposited with the Depository said..... shares of preferred stock properly endorsed in blank and stamped for transfer. Said shares, together with any additional shares acquired or purchased pursuant to the provisions of paragraph 4 hereof for account of the holders of receipts issued under this paragraph 2, shall be held by the Depository in a

separate account which shall be called "Purchasers Stock Account." Mr. X. shall receive in respect of said shares a receipt or receipts substantially in the following form:

Deposit Receipt

for

Preferred Stock of Corporation
in Purchasers Stock Account
Under Deposit Agreement dated

between

X, and certain other holders of preferred stock of Corporation, and the undersigned as Depositary.

The undersigned Depositary hereby certifies that it has received from Mr. X. certificates for shares of preferred stock of Corporation for deposit in the Purchasers Stock Account under and subject to the terms and conditions stated in the above mentioned Deposit Agreement. The registered holder hereof assents to, and is bound by, the provisions of said Deposit Agreement by receiving this receipt and is entitled to the benefits to which the holder of a receipt in respect of such stock issued under paragraph 2 of said Deposit Agreement is or may become entitled pursuant to the terms and conditions of said Deposit Agreement, an original counterpart of which is on file and open for inspection at the office of the undersigned Depositary in the City of Said Deposit Agreement provides for its termination on, or upon the earlier happening of certain events specified therein.

The interest represented by this receipt is assignable subject to the terms and conditions of said Deposit Agreement by transfer on the books kept at the office of the Depositary for that purpose by Mr. X. or the registered transferee hereof in person or by attorney, and the

notation of such transfer hereon by the Depositary, upon presentation of this receipt for that purpose and payment of the transfer taxes and other charges, if any, in connection with such transfer.

.....

Depositary.

by

.....

Dated.....

(Reverse Side)

For value received.....hereby sells, assigns and transfer unto.....the within Deposit Receipt and all rights and interests represented thereby, and do hereby irrevocably constitute and appoint.....true and lawful attorney to transfer the same on the books of..... Trust Company, with full power of substitution.

Dated

In the presence of

Note: No writing under these columns except by the Depositary.

		Signature of
Date of transfer	Name of Transferee	Depositary

Notation of additional stock credited to the registered holder hereof under paragraph IV of said Deposit Agreement:

		Signature of
Date of Crediting	Number of Shares	Depositary

Notation of payments under paragraph VII of said Deposit Agreement:

		Signature of
Date of Payment	Amount of Payment	Depositary

The interest represented by said receipts may be assigned, subject to the terms and conditions of this Agreement, only

by transfer on the books kept at the office of the Depositary for that purpose by the registered holders thereof in person or by attorney, and upon notation of such transfer on such receipts by the Depositary, upon presentation of the receipts for that purpose and payment of the transfer taxes and, if the Depositary shall so require, a charge not exceeding cents for each share of preferred stock at the time represented by such certificate and not exceeding in the aggregate one dollar for each transfer.

3. From time to time, after the period for making deposits hereunder shall have expired, as the Depositary shall receive from Corporation any moneys for the purchase or retirement of preferred stock, the Depositary shall deliver to the Corporation certificates for preferred stock of a par value (disregarding accrued dividends) equal to the aggregate amount of moneys so received by the Depositary. Subject to the provisions of paragraph 5 hereof the stock so delivered shall be taken from the Depositors Stock Account and from the Purchasers Stock Account in proportions to the number of shares of preferred stock at the time in said accounts respectively and charged against the holders of receipts issued under paragraphs 1 and 2 hereof in proportion to the number of shares of preferred stock at the time to their credit, respectively; and the moneys so received shall be paid into the Depositors Stock Account and into the Purchasers Stock Account and credited to the holders of said receipts in like proportions.

4. (a) Forthwith upon the payment into the Purchasers Stock Account of any moneys pursuant to the provisions of paragraph 3 of this agreement, the Depositary shall, subject to the provisions of paragraph 5 hereof, apply one-half of the amount thereof to the purchase of preferred stock from the Depositors Stock Account at the price of \$. flat per share; and shall pay the amount so applied into the Depositors Stock Account and shall transfer from the Depositors Stock Account to the Purchasers Stock Account the number of shares so purchased.

(b) Upon any such purchase and transfer the amount so applied shall be charged against the respective holders of

receipts issued under paragraph 2 hereof in proportion to the number of shares of preferred stock at the time to their credit, respectively, and shall, subject to the provisions of paragraph 5 hereof, be credited to the respective holders of receipts issued under paragraph 1 in proportion to the number of shares of preferred stock at the time to their credit, respectively. Notice of each such charging and crediting shall be given by the Depositary by registered mail, addressed to the registered holders of such receipts, within fifteen days after each such charging or crediting.

(c) Upon any such purchase and transfer the shares so purchased shall, subject to the provisions of paragraph 5 hereof, be taken ratably from the shares to the credit of, and shall be charged against, the respective holders of receipts issued under paragraph 1 in proportion to the number of shares at the time to their credit respectively; and they shall be credited to the respective holders of receipts issued under paragraph 2 hereof in proportion to the number of shares at the time to their credit, respectively. The Depositary shall, if so requested by the registered holder of any such receipt issued under paragraph 2 and reimbursed by him for all transfer charges, cause the shares so purchased and transferred and credited to such holder (excepting, however, any fractions of shares), to be transferred into the name of such holder; provided, however, that simultaneously with such transfer the new certificates for such shares shall be redeposited with the Depositary in the Purchasers Stock Account properly endorsed in blank and stamped for transfer except that Mr. X. shall have the privilege of depositing money in place of stamps to be used in purchasing stamps when transfers may require them. The Depositary shall, upon request of the holder of any such receipt and presentation by him of his receipt for that purpose to the Depositary at its office,, make notation on said receipt of the number of shares so purchased and transferred and credited from time to time to such holder.

5. The provisions of paragraph 3 and paragraph 4 of this Agreement are subject to the proviso that in delivering preferred stock to the Corporation out of stock to the credit of, and apportioning moneys received from

Corporation for such stock among the holders of receipts issued under paragraphs 1 and 2, and in applying moneys paid into the Purchasers Stock Account to the purchase of preferred stock from the Depositors Stock Account and charging the stock so purchased against, and crediting the proceeds thereof to, the holders of receipts issued under paragraph 1 hereof, fractions of shares shall be disregarded; and the Depositary shall from time to time deliver to the Corporation under the provisions of paragraph 3 from the shares at the time to the credit of the respective holders of receipts under paragraphs 1 and 2 and shall from time to time transfer to the Purchasers Stock Account under the provisions of paragraph 4, from the shares at the time to the credit of the respective Depositors, in respect of each holder, the next lower number of full shares contained in the number of shares produced, in the case of action under paragraph 3 by the division on an exact pro rata basis among the respective holders of receipts issued under paragraph 1 and paragraph 2 hereof of moneys tendered by the Corporation for stock, or, in the case of action under paragraph 4, by the distribution on an exact pro rata basis among the holders of receipts issued under paragraph 1 hereof of an exact one-half of moneys from time to time paid into the Purchasers Stock Account; it being intended that while all such purchases, charges, credits and distributions shall be made from, against and to the interest of the persons subject or entitled thereto upon a pro rata basis as nearly as may be, fractions of shares shall not be dealt with but shall be disregarded.

6. Subject to the provisions of paragraph 10 hereof, whenever the Depositary shall hold in the Depositors Stock Account an amount of moneys equal to cents for each share of stock originally deposited in said account, such moneys shall be distributed to the respective registered holders of receipts issued under the provisions of paragraph 1 hereof in proportion to the amount of moneys at the time to their credit respectively (other than moneys previously ordered distributed); and payment of the amount so distributable shall be made to the registered holders of such receipts upon presentation of their receipts for proper notation thereon of such payment at the office of the

Depository,..... The Depository shall, notwithstanding that the moneys in the Depositors Stock Account may be less than the amount aforesaid, make distribution of such moneys in like proportion at any time in its discretion, and shall make such distribution whenever requested by the holders of receipts issued under paragraph 1 representing one-fourth in amount of the stock at the time in the Depositors Stock Account. Notice of each such distribution shall be given by the Depository by registered mail addressed to the registered holders of such receipts within fifteen days after receipt by the Depository of moneys to an amount sufficient to require distribution under the terms of this paragraph 5, or upon its election to make any such distribution, or within fifteen days after request, as aforesaid, that it make such distribution.

7. Subject to the provisions of paragraph 10 hereof, whenever the Depository shall hold in the Purchasers' Stock Account an amount of moneys equal to.....cents for each share of stock at the time held in said account and not required by the provisions of paragraph 4 hereof to be otherwise applied, such moneys shall be distributed to the respective registered holders of receipts issued under the provisions of paragraph 2 hereof in proportion to the amount of moneys at the time to their credit respectively (other than moneys previously ordered distributed); and payment of the amount so distributable shall be made to the registered holders of such receipts upon presentation of their receipts for proper notation thereon of such payment at the office of the Depository,..... Notice of each such distribution shall be given by the Depository by registered mail addressed to the registered holders of such receipts as soon as practicable after receipt by the Depository of moneys to an amount sufficient to require distribution under the terms of this paragraph 7.

8. The Depositors by the deposit of their shares hereunder grant to Mr. X. an option to purchase at any time prior to....., all, but not a part, of the shares held in the Depositors' Stock Account at the time of the exercise of such option, at the price of \$.....flat per share; such option to be exercised by the deposit with the Depository for account of the Depositors' Stock Account of an amount equal

to \$. per share for each share of stock at the time in said account. Upon such deposit the Depositary shall deliver to Mr. X. all the certificates for stock at the time held in the Depositors' Stock Account and shall forthwith make distribution of the moneys and certificates held by it as hereinafter in paragraph 9 provided.

9. (a) When all the stock in the Depositors' Stock Account shall have been sold either to the. Corporation or to the Purchasers' Stock Account, or

(b) Whenever Mr. X. shall have exercised his option as in paragraph 8 hereof provided, or

(c) If such sale of all of said stock, or such exercise of said option shall not have been completed prior to., then on., or

(d) If on or before., there shall not have been deposited hereunder pursuant to the provisions of paragraph 1 hereof at least. shares of preferred stock, and Mr. X. shall file with the Depositary on or before., notice of his election that this agreement shall terminate, then on.:

The Depositary shall distribute and pay over to the holders of receipts issued under paragraph 1 hereof all moneys and certificates for preferred stock then held in the Depositors' Stock Account and to their credit, respectively, and to the holders of receipts issued under paragraph 2 hereof all moneys and certificates for preferred stock then held in the Purchasers' Stock Account and to their credit, respectively, in each case upon surrender of the respective receipts for cancellation and subject to the provisions of paragraph 10 hereof. None of the stock, at any time held hereunder, shall be withdrawn or distributed except as in this paragraph 9 or in paragraph 3 or paragraph 8 hereof provided. Notice of such distribution shall be given by the Depositary to all holders of said receipts by registered mail addressed to the registered holders thereof as soon as practicable after the occurrence of any event requiring distribution under the provisions of this paragraph 9.

10. The Depositary may advise with legal counsel and shall not be liable in respect of any action taken in good faith by it, and shall be entitled to reasonable compensation for all services

rendered by it hereunder (the amount of such compensation to be approved by Mr.....and Mr. X.) and such compensation, together with all reasonable expenses necessarily incurred and actually disbursed by the Depositary, shall be a ratable charge upon all stock deposited hereunder and upon any moneys paid by the.....Corporation to the Depositary in respect of any stock deposited hereunder, and the Depositary shall be entitled to deduct such reasonable compensation and expenses from the amounts so paid to it before making any distribution or application thereof under the terms of this agreement; provided, however, that such compensation and expenses shall not exceed in the aggregate an amount equal to ten cents for each share of stock deposited hereunder. Out of the first moneys received by the Depositary from the.....Corporation under the provisions of paragraph 3 hereof, the Depositary may set aside for the purpose of securing the payment of such compensation and expenses an amount equal to five cents for each share of deposited stock.

11. Nothing in this agreement contained shall be construed to vest in the Depositary, or to deprive the registered holder of any stock deposited hereunder of, the right to receive any dividends which may be declared upon such stock or to vote or to consent in respect of such stock at any stockholders' meeting or in connection with any other corporate proceedings of the.....Corporation.

IN WITNESS WHEREOF said Mr. X. andhave signed this instrument under seal, the other Depositors have or may become parties hereto in the manner hereinbefore provided, and the Depositary has executed this instrument under seal, as of the day and year first above written.

(L. S.)

(L. S.)

.....
By

Vice-President.

Attest:

Assistant Secretary.

**Protective Agreement—Deposit of Bonds with Committee
to Avoid Foreclosure of Mortgage**

AGREEMENT, made.....between.....
.....and their successors, as a
Protective Committee for.....Bonds of.....
.....(hereinafter called the "Committee"), and the
holders of record of certificates of deposit for such of said bonds
as shall be deposited hereunder (hereinafter called the "De-
positors"),

WHEREAS, there are outstanding \$..... face
amount of.....Bonds of.....
(hereinafter called the "Traction Company"), and said bonds
are secured by an indenture made between the Traction
Company and the....., as Trustee, dated.....
....., and the pledge of all the outstanding capital stock and
\$.....face amount of.....Bonds of.....
.....(hereinafter called the "Railway Company")
and \$.....face amount of bonds of constituent or
associated companies, (the bonds and stock so pledged being
hereinafter called "the pledged securities"); and

WHEREAS, there are outstanding \$....., face
amount of.....Bonds of the Railway Com-
pany and said bonds are secured by a mortgage or deed of
trust made by the Railway Company to.....,
as Trustee, dated.....; and

WHEREAS, the Railway Company is in default for failure to
pay the interest upon its said.....Bonds, which
fell due on....., for failure to pay taxes to a large
amount, now due and payable and otherwise under the mort-
gage or deed of trust securing said bonds, and

WHEREAS, there is danger that the said mortgage may be
foreclosed, and for this and other reasons it is desirable for the
holders of the said bonds of the Traction Company to unite and

act together for the maintenance and protection of their rights and interests:

Now, THEREFORE, the Depositors, each for himself and not for any other, hereby agree with each other, and with the Committee, as follows:

1. The Committee is hereby vested with the legal title to all of said bonds of the Traction Company which are deposited hereunder, and the Depositors hereby assign and transfer said bonds to the Committee, as trustee of an express trust, for the benefit and protection of the rights and interests of the Depositors, but subject to the terms and provisions of this agreement.

2. The Committee shall have power and authority to take such action and do such things as it may in its judgment deem to be necessary or desirable for the maintenance or protection of the rights or interests of the Depositors, including power and authority to cause the.....Trust Company ofas Trustee under said indenture dated....., to exercise and enforce its rights and remedies under said indenture; to purchase the pledged securities or any part thereof at any sale under said indenture or otherwise, and to use the deposited bonds in making payment therefor; to purchase or otherwise acquire, pay or make advances for the payment of, collect, sell, mortgage, pledge or otherwise dispose of, any bonds, coupons, debts or obligations of the Railway Company or the Traction Company, or any bonds, coupons, debts or obligations which are secured by pledge or lien upon any property owned or operated by the Railway Company or the Traction Company; to make investigations with reference to the property, debts, obligations, business and affairs of the Traction Company and the Railway Company, and to determine any questions of policy or management that may arise in respect thereto; to maintain, or cause others to maintain, suits, actions and other proceedings at law or in equity; to make, execute and deliver demands, requests, consents, contracts and other instruments; to employ depositaries, counsel, attorneys, accountants and other agents and to adjust and pay their compensation; to conduct, adopt and carry into effect any

other measures, proceedings or negotiations which it may deem expedient in the interest of the Depositors; to cause to be transferred to or registered in its name or the name of its nominee, the deposited bonds, the pledged securities and any other bonds or stock which the Committee may acquire; to exercise exclusively the right to vote or otherwise represent the same, and to collect the dividends and interest thereon, and generally to exercise and enforce all or any of the rights and remedies appertaining thereto or to any other property which the Committee may at any time acquire, and, in addition, to do any other act or thing which the Depositors, or any of them, could or might lawfully do if they had not deposited their bonds hereunder; and when and as deemed by the Committee to be necessary or desirable in the exercise of any of its powers hereunder or for the payment of the obligations or expenses of the Committee, including the compensation of its members, or for any of the purposes of this agreement, the Committee may use any monies collected or received by it hereunder, and shall have power to borrow money and to pledge or mortgage as security for the repayment thereof, with the usual power of sale and other provisions, all or any part of the property which the Committee may at any time hold or acquire, including the deposited bonds, the pledged securities, and all other stocks, bonds, coupons, debts and obligations;

Provided, however, that the Committee shall not have power or authority to make any contract or assume any obligation in the name of the Depositors, and that no Depositor shall be personally bound by or liable upon any contract or obligation which the Committee may make or assume.

3. Holders of.....Bonds of the Traction Company may deposit their bonds with such Trust Company or Companies as the Committee may appoint to be the Depositary hereunder or with such agent or agents to act therefor as the Committee may deem desirable, during such time or times as the Committee may permit, and will be entitled to receive therefor certificates of deposit issued in their names. Registered bonds must be accompanied by instruments of assignment approved by the Depositary, and coupon bonds must be accompanied by all coupons maturing on and after.....

In case of the deposit of bonds which, by reason of the advance payment of taxes or otherwise, are entitled to any exemption or privilege not common to all bonds deposited hereunder, appropriate notations will be made upon the certificates of deposit issued therefor. The certificates of deposit will be transferable only on the books of the Depositary upon surrender thereof properly endorsed, new certificates being issued in the names of the transferees.

4. The deposit of bonds hereunder or acceptance of a certificate of deposit therefor will be deemed the equivalent of execution of this agreement and all Depositors will be subject to and bound by the provisions of this agreement in the same manner and with the same effect as if they had executed the same.

5. The Depositary will hold and deal with the deposited bonds subject to and in accordance with the orders of the Committee, and shall incur no liability for anything done or permitted to be done at the request or direction of the Committee. The Depositary may resign by giving to the Chairman of the Committee, or to any two members of the Committee, a notice of resignation, at least ten days before such resignation becomes effective, unless the Committee shall waive such notice or accept a shorter notice. The Depositary may at any time be removed by the Committee. The Depositary who shall resign or be removed, upon the payment of all charges and moneys due to it, may deliver to or upon the order of the Committee the deposited bonds and any other property held by it for account of the Committee or the Depositors. The Depositary shall not be liable for any action taken in good faith in the belief that the Depositor of any bond is the lawful owner and holder thereof.

6. The Committee may act by a majority thereof, either at a meeting or in writing without a meeting. Any member may vote or act by proxy appointed in writing, who may be another member of the Committee, or any other person approved by the Committee. The Committee may appoint new members so as to increase their number, or to fill vacancies occurring by death, resignation, or otherwise. The Committee may appoint a secretary who need not be a member of the Committee.

7. The members of the Committee are entitled to reasonable compensation for their services, such compensation to be included and treated as part of the expenses of the Committee. The obligations and expenses of the Committee will be a charge upon all property at any time held by the Committee, prior and superior to the rights and interests of the Depositors.

8. The members of the Committee shall hold all property as joint tenants and not as tenants in common, the title, rights and powers of the Committee being vested exclusively in those persons who, for the time being, are members of the Committee. No member of the Committee shall be responsible or liable for the act or omission of any other member, nor shall the Committee or any member thereof be responsible or liable for the act or omission of any agent or employee selected in good faith, nor for any error of judgment, of fact, or of law, nor for anything except its or his own willful misconduct. Any member of the Committee may deposit bonds and become a Depositor hereunder.

9. The Committee shall have power, from time to time, in the manner and subject to the right of withdrawal hereinafter provided, to amend this agreement, so as to provide for the reorganization or readjustment of the Traction Company or the Railway Company or both, or the disposition of the deposited bonds, the pledged securities or any other property acquired by the Committee, or so as to enlarge the powers of the Committee, or make any other change in or addition to this agreement. The Committee in such case shall file with the Depositary a copy of any proposed amendment and give to the Depositors notice thereof with a copy of the amendment, and, within twenty days after the giving of such notice, any Depositor may file with the Depositary written objection to the amendment. Within twenty days after the expiration of such time for filing objections, the Committee may adopt the amendment and give notice thereof to the Depositors, and thereupon the amendment will become effective and binding upon all Depositors;

Provided, however, that if Depositors representing thirty per cent, in face amount of the deposited bonds file with the Depositary objections to the amendment and the Committee

gives notice of adoption thereof, within the times provided therefor respectively, any Depositor so objecting will have the right, within twenty days after the giving of such notice of adoption, to withdraw from this agreement, and to receive the bonds represented by his certificate of deposit (such bonds, in case of a sale of the pledged securities, being appropriately stamped to show payment thereon of a distributive share of the proceeds of such sale) and his proportionate share of all other property then held by the Committee, upon surrendering to the Depositary his certificate of deposit, properly endorsed, and paying to the Committee such amount as it may determine to be his proportionate share of its obligations and expenses incurred up to that time.

10. If the Committee shall at any time conclude that there is no longer any occasion for continuing this agreement, it may terminate the same by giving notice thereof to the Depositors, and thereupon each Depositor will be entitled to receive the bonds represented by his certificate of deposit (such bonds, in case of a sale of the pledged securities, being appropriately stamped to show payment thereon of a distributive share of the proceeds of such sale) and his proportionate share of all other property then held by the Committee, upon surrendering to the Depositary his certificate of deposit, properly endorsed, and paying to the Committee his proportionate share of its obligations and expenses.

11. Any notice which the Committee may desire to give to Depositors shall be given sufficiently and completely if it is published in two newspapers of general circulation in the City of New York and mailed in the City of New York to each Depositor who has furnished an address to the Committee, at the last address so furnished.

12. The Committee may in its discretion waive any condition or requirement herein contained and may, in individual cases, permit the deposit or withdrawal of bonds upon such terms and conditions, other than those herein provided, as the Committee shall deem to be just and expedient.

13. If at the time of the withdrawal of any Depositor from, or the termination of, this agreement, the Committee shall hold any property which cannot conveniently be divided into

the shares which the several Depositors, or any thereof, may be entitled to receive as provided in paragraph 9 or paragraph 10 hereof, the Committee, in lieu of delivering to any Depositor his proportionate share of such property, may, by its own appraisal, fix the value of such share and pay to such Depositor the cash equivalent thereof, or may sell such property in such manner and at such price as it shall deem to be fair and proper, and may pay to such Depositor his proportionate share of the cash proceeds thereof. No Depositor who, in case of withdrawal from or termination of, this agreement, accepts the bonds represented by his certificate of deposit and what the Committee tenders to him as his proportionate share of the other property then held by it, shall thereafter have any right or interest in this agreement, or in any property held by the Committee, or any right or claim against the Committee.

14. The Committee owes no duty or obligation to anybody other than holders of record of certificates of deposit for bonds deposited hereunder, and will be entitled for all purposes to treat each holder of record of such a certificate as the absolute owner thereof and the only person entitled to the rights and interests represented thereby.

15. Unless the contrary appears to have been intended, words in the plural number shall include the singular thereof, and *vice versa*, and words of the male gender shall include the female and neuter genders, and *vice versa*.

16. In case of any doubt or ambiguity as to the meaning of any provision of this agreement, the interpretation thereof by the Committee made in good faith shall be conclusive and binding upon the Depositors. The enumeration of specific powers shall not be construed to limit the scope of any general powers hereby conferred upon the Committee.

17. The undersigned, named as the Committee hereunder, agree to act as such Committee.

IN WITNESS WHEREOF, the members of the Committee have executed this agreement the day and year first above written and have filed the same with the Depository.

Agreement Between Creditors of Bankrupt Corporation for Joint Action to Protect Mutual Interests

AGREEMENT made....., between such of the unsecured creditors of....., hereinafter called the "Corporation," as shall become parties to this agreement, hereinafter called the "creditors," and....., andhereinafter called the "Committee," and theBank, hereinafter called the "Depositary," ...

WHEREAS the Corporation is indebted to the various unsecured creditors in the aggregate amount of \$. . . . and

WHEREAS the Corporation was duly adjudicated a bankrupt on or about the day of and

WHEREAS the Creditors deem it to their best interests and propose to act together for the protection of their mutual interests,

NOW, THEREFORE, in consideration of the premises and of the undertakings herein contained, the Creditors, each for himself and not for any of the others, the Committee and Depositary, agree as follows:

1. The Committee and their respective successors are hereby constituted and appointed and agree with one another and with the Creditors to act as the committee to exercise the powers and perform the duties hereinafter set forth.

2. The Creditors, severally agree forthwith to deposit under the terms of this agreement with the Depositary at its office at, proofs of their respective claims duly executed, together with power of attorney to the said Committee and their respective successors, irrevocable for the purposes of this agreement, and shall constitute part of this agreement as fully as though herein embodied.

3. The Depositary agrees to issue its receipt to the Creditors whose claims are deposited pursuant to the provisions of this agreement. The Committee may treat the person in whose name any receipt hereunder is issued as the absolute owner thereof, and of all rights of an original Depositor.

4. The Committee will institute an investigation into the affairs of the Corporation and report its findings and recommendations to the Creditors and submit a plan of action looking

toward a realization on said claims. The Committee shall file any such plan with the Depositary and mail a copy to each Creditor at his address.

5. The Committee, in its sole discretion, may fix as a fair contribution for the compensation, expenses, liabilities, obligations and indebtedness of the Committee and Depositary a sum not exceeding % of the aggregate par value of the deposited claims.

6. Any holder of a receipt shall have the privilege, within days after the filing and mailing of any plan aforesaid, to withdraw from said plan, and upon surrender of the said receipt, to receive the proof of claim and power of attorney. Any Creditor who does not so withdraw within said period shall be conclusively and finally deemed for all purposes to have waived irrevocably the right to withdraw and such plan shall be binding on all Creditors who shall not have so withdrawn, and they shall be conclusively and finally deemed for all purposes to have assented to such plan and to the terms thereof whether they receive actual notice thereof or not and be irrevocably bound and concluded by the same.

7. The Committee shall be under no obligations to enforce or carry out any plan which it may propose, and it shall have full power to determine when a sufficient deposit or assent has been made hereunder to justify it in declaring any plan adopted under this agreement to be operative.

8. (a) The Committee may elect a chairman, may appoint a secretary and an assistant secretary who need not be members of the Committee and who shall keep a record of its acts and proceedings. Any member of the Committee may resign by giving notice of his resignation in writing to the chairman or secretary and the committee may settle any account or transaction with such member and give a full release or discharge to him upon such resignation. The Committee may at any time add to its number and may fill all vacancies occurring in its number from any cause but need not necessarily do so and the Committee as at any time constituted, shall exercise all the powers and rights of the Committee as originally formed. Any member of the Committee may, by written proxy, authorize any person, including any other member of the Committee, to

act in his place. A majority of the members of the Committee shall constitute a quorum for all purposes and all of the powers of the Committee may be exercised by a majority of its members either at a meeting or in writing without a meeting. Notice of any such action had without a meeting shall be forthwith given to all members not participating therein. The Committee may authorize and empower any one or more of its members to exercise any of the powers of said committee.

(b) The Committee may from time to time make, alter or rescind such rules and regulations for the transaction of its business as to it may seem advisable and may extend or limit the time within which and the conditions under which claims may be deposited.

(c) Neither the Committee nor any of its members shall be under any obligation to take any action which shall in its or his opinion render him or it personally liable unless the Creditors give it or him good and sufficient indemnity.

9. The Depositary may resign and be discharged from all further obligations of any kind upon serving written notice of its resignation upon the chairman or secretary of the Committee, and in that event a successor as Depositary may be appointed by the Committee. Such successor shall be vested with all the powers, rights and duties of the original Depositary appointed hereunder, and outstanding receipts shall have the same force and effect as if issued by such successor Depositary.

10. The Committee shall have power to employ such Depositaries, attorneys, accountants, appraisers, agents or employees as in its discretion shall be necessary or useful and to pay such compensation as it shall deem proper and shall be entitled to reasonable compensation for its services and any plan adopted may provide for the payment thereof. Neither the Committee nor any of its members nor the Depositary shall be personally liable for any act or omission of any agent, attorney or employee selected in good faith nor for any error of judgment or mistake of fact or law or for any thing other than his individual willful malfeasance. No member of the Committee shall be liable for the act or failure to act of any other member of the Committee. Neither the Committee nor

any of its members shall be personally liable for any act or omission of the Depositary.

11. The Committee is authorized and empowered to construe this agreement and any plan or agreement of reorganization, readjustment or sale adopted pursuant to this agreement and its construction of same made in good faith shall be final, conclusive and binding upon the Creditors and upon the holders of receipts. It may supply defects and omissions herein or in any such plan or agreement or make such modification herein or therein as in its judgment may be expedient or necessary to carry out the same and its judgment as to such expediency or necessity shall be final.

12. (a) The Committee is hereby vested with power in its uncontrolled discretion to take such proceedings and steps, and to give such directions, in court or otherwise, as it may deem necessary or proper for the purpose of protecting the interests of the Creditors and enforcing their rights, and may exercise in respect to the claims deposited, all the rights and powers vested in or conferred upon the owners and holders of such claims.

(b) The Committee may buy property of the corporation and pay therefor with deposited claims.

(c) The Committee may borrow, for such period and upon such terms and conditions as it shall determine, but not to exceed the aforesaid % of the total amount of claims deposited, such sums of money as in its judgment may be proper to enable it to meet its expenses or liabilities, or generally for any of the purposes of this agreement, and may charge or pledge the deposited claims for the payment of any sums so borrowed. The Committee shall keep an account of its receipts and expenditures and upon the termination of its duties shall file a copy of such account with the Depositary and thereupon the Committee shall be discharged from all its duties and obligations.

13. Any member of the Committee and any firm or corporation with which he may be associated and the Depositary, its officers or agents, may make deposit of his, its or their claim hereunder, the same as any other Creditor, and may be or become pecuniarily interested in any matters which are or may

be the subject of this agreement or of any plan or reorganization, readjustment or sale which the Committee may adopt as herein provided.

14. The Depositary shall act as agent of the Committee and be protected in acting or omitting to act or for any action taken upon the written instructions of the Committee. That the claims deposited hereunder shall be held by the Depositary subject at all times to the order and full control of the Committee and the Depositary shall deliver the same or any of them upon written order of the Committee or a majority thereof and shall be under no other liability.

15. The certificate of the chairman or secretary or assistant secretary of the Committee as to the action taken by the Committee shall be conclusive upon the Depositary and upon the Creditors as to all acts and things so certified to have been done by the Committee.

16. If for any reason the Committee shall consider it expedient at any time to terminate this agreement, it may do so, giving like notice of its election as hereinbefore provided with respect to the adoption of any plan. In the event of any such termination, holders of receipts shall, on surrender of said receipts, be entitled to the delivery of the claims and powers of attorney herein provided for.

17. All claims deposited hereunder shall be treated alike, and without preference one over the other, and all proceeds or moneys or other property that may be received or obtained by the said Committee hereunder shall be distributed pro rata among the Creditors according to their respective claims.

18. Any notice given as in this agreement provided shall be deemed to be equivalent to actual notice.

19. Each of the parties hereto agrees to execute, acknowledge and deliver any instruments necessary to carry this agreement into effect, and each of the Creditors agrees to submit any further proof that may be necessary to establish the claim filed.

20. This agreement may be signed in counterparts and all such counterparts shall constitute one agreement.

21. This agreement shall be binding upon the parties hereto their successors, legal representatives and assigns, respectively.

IN WITNESS WHEREOF the members of the Committee have subscribed this agreement as of the day and year first above written, the Creditors have caused these presents to be signed by persons and/or officers thereunto duly authorized, and, in case of corporations, have caused the corporate seal to be hereto affixed, and have thereby become parties hereto, and the Depository has caused these presents to be signed by persons thereunto duly authorized, and its corporate seal to be affixed.

Reorganization Agreement—Railroad Company

AGREEMENT dated, between
 (herein called the "Reorganization Managers")
 and a REORGANIZATION COMMITTEE of (herein-
 after called the "Old Company"), consisting of
 (herein called the "Reorganization Committee"), and HOLD-
 ERS of BONDS, CLAIMS, OBLIGATIONS and STOCK, hereinafter
 named, who shall become parties to this agreement as herein
 provided, their successors and assigns, and the HOLDERS of
 CERTIFICATES OF DEPOSIT ISSUED UNDER OR MADE SUBJECT
 TO THE FOREGOING PLAN OF REORGANIZATION¹ AND THIS
 AGREEMENT (hereinafter collectively called the "DEPOSITORS"),
 WITNESSETH:

The parties, in consideration of their mutual agreements herein, for the purpose of carrying out the foregoing Plan of Reorganization,¹ have mutually agreed and hereby do severally agree, each of the Depositors agreeing with the Reorganization Managers and the Reorganization Committee and with every other Depositor, as follows:

1. The foregoing Plan is and shall be taken to be a part of this Agreement with the same effect as though embodied herein, and the Plan and this Agreement shall be read as parts of one and the same paper.

2. The Depositors hereby assent to and accept all the provisions of the foregoing Plan and the same is hereby approved and adopted.

3. No estimate, statement, explanation or suggestion or

¹ The Plan of Reorganization referred to has been omitted because of no particular value as a precedent.

anything contained in the Plan or in the introductory statement prefixed thereto, or the accompanying exhibit, or this Agreement, or any circular or advertisement issued or hereafter issued by or on behalf of the Reorganization Managers or the Reorganization Committee, or of the respective Committees hereinafter named, or of any Depositary, is intended or is to be taken as a representation or as a condition of any deposit, subscription, assent or payment under the Plan and Agreement; and no defect or error therein shall release any deposit under the Plan and Agreement, or affect or release any assent thereto or payment made or anything done thereunder or in connection therewith, except with the written consent of the Reorganization Managers.

4. Holders of Bonds may participate under this Plan and Agreement in the manner provided in the Plan. Holders of certificates representing said bonds deposited under the Agreement of, mentioned in the Plan, or under the Agreement of, mentioned in the Plan, who do not exercise the right of dissent and withdrawal conferred by said agreements, respectively, will be entitled to the benefits of this Plan and Agreement without the issue of new certificates and shall be irrevocably bound thereby.

5. Holders of (*another class of*) Bonds may participate under this Plan and Agreement in the manner provided in the Plan. Holders of certificates representing said bonds deposited under the Agreement of, mentioned in the Plan, who do not exercise the right of dissent and withdrawal conferred by said Agreement, will be entitled to the benefits of this Plan and Agreement without the issue of new certificates and shall be irrevocably bound thereby.

6. Holders of (*a third class of*) Bonds may participate under this Plan and Agreement in the manner provided in the Plan. Holders of certificates representing said bonds (a) deposited under the Agreement of, mentioned in the Plan, who do not exercise the right of dissent and withdrawal conferred by said Agreement, and (b) deposited under the Agreement of, mentioned in the Plan, when the Plan becomes effective and binding upon them in the manner provided in the Plan and said Agreement, will be entitled to the

benefits of this Plan and Agreement without the issue of new certificates and shall be irrevocably bound thereby.

(Similar provisions for various classes of securities)

.....

.....

.....

7. All Depositors hereunder who are holders of certificates representing stock of the Old Company or certificates of deposit issued under said agreement of.....hereby severally agree that prompt payment of the sums by the Plan required to be made by them is an essential condition of participation by them severally in the new securities provided for in the Plan, or any other right or benefit under the Plan and Agreement, and that any such Depositor who shall fail to make prompt payment of any sum required to be paid by him within any period fixed or limited by the Plan or this Agreement or by the Reorganization Managers for such payment, forthwith and without further or other notice or action, shall cease to have any rights under the Plan or under such certificate or certificates of deposit therefor and shall cease to be entitled to any of the benefits thereunder and shall not be entitled to the return of the stock represented by his said certificate or certificates or the repayment of any cash (or any installment of cash assessment or any installment of the purchase price of securities purchased) theretofore paid by him, or to have any further notice or right in respect thereof. The Reorganization Managers may, however, in their discretion, at any time accept payment of overdue installments of payment from any such Depositor. The Reorganization Managers may waive and remit any penalty prescribed either in the Plan or Agreement, or in pursuance thereof, and may also, whenever and upon such terms as they shall deem proper, accept from any such Depositor the surrender of any certificate of deposit representing such stock issued under or subjected to the Plan, and upon receipt thereof and in exchange therefor they may surrender and deliver deposited stock to the amounts stated in such certificates of deposit respectively.

8. The Reorganization Managers may determine who are or

shall be creditors under the Plan (subject to the adjustments already made with certain creditors) and the terms and manner in which creditors may participate under the Plan and the securities thereunder to be used in that respect. The Reorganization Managers are hereby authorized and directed to take all steps necessary to carry into effect all adjustments heretofore made with creditors.

9. Certificates of deposit issued under the several deposit agreements herein and in the Plan mentioned are hereby adopted as certificates of deposit under the Plan and Agreement. All references herein and in the Plan to certificates of deposit under or subject to the Plan shall be deemed to include such certificates so adopted as well as new certificates issued under the Plan.

10. Any holder of any certificate of deposit issued under any of the Deposit Agreements aforesaid may present the same to one of the Depositaries under the Plan or to the Depositary which issued it for the purpose of having notation made upon his certificate of deposit that such certificate of deposit is held subject to the Plan and this Agreement and that the holder thereof has assented to all the terms and provisions thereof, and thereupon such notation shall be made by such Depositary.

11. All certificates of deposit subject to the Plan, and the interests represented thereby, and all rights by virtue thereof, shall be transferable only subject to the terms and conditions of the Plan and Agreement and in such manner as the Reorganization Managers shall approve. Upon any such transfer all rights and liabilities of the transferor in respect to his deposit represented by his transferred certificate (including his rights to any payments made in respect thereof and receipted for by endorsement thereon), as well as his liability for any unpaid balance due on such certificates, and all his other rights, benefits, liabilities or obligations thereunder and under the Plan shall pass to the transferee or transferees, and holders of such certificates of deposit shall, for all purposes, be substituted in place of the former holders, subject to the Plan and this Agreement. All such transferees, as well as the original owners of such certificates, shall be embraced within the term "Depositors" wherever used herein, and every and any cer-

tificate of deposit under the Plan may be treated by the Reorganization Managers and their Depositaries and the Committees under said Deposit Agreements and their Depositaries as a negotiable instrument, and the bearer or, if registered, the registered holder for the time being, may be deemed to be the absolute owner thereof and of all rights thereunder, and neither the Reorganization Managers, the Reorganization Committee nor said other Committees, nor any Depositary, shall be affected by any notice to the contrary. By acceptance of or holding any certificate of deposit subject to the Plan every recipient or holder thereof shall become a party to the Plan and Agreement with the same force and effect as though an actual subscriber hereto. The term "Depositor" whenever used herein is intended and shall be construed to include not only persons acting in their own right, but also trustees, guardians, committees, agents or persons acting in a representative or fiduciary capacity and those represented by or claiming under them, and partnerships, associations, joint stock companies and corporations. No rights hereunder shall accrue in respect to any stock or bonds of the Old Company or in respect to any claims against the Old Company, unless or until the same shall have been subjected to the Plan and Agreement. A Bondholders' Committee, consisting of.....and others, constituted by and acting under said Deposit Agreements dated....., and.....; a Bondholders' Committee consisting of.....and others, constituted by and acting under said Deposit Agreement dated.....; a Bondholders' Committee consisting of.....and others, constituted by and acting under said Deposit Agreement dated.....; and the Stockholders' Committee, consisting of.....and others, constituted by and acting under said Deposit Agreement dated..... (said Committees being herein sometimes referred to as "the Committees" and said Agreements as the "Deposit Agreements"); have severally prepared, approved and adopted, and have filed or are to file, the Plan and this Agreement in accordance with the provisions of said respective Deposit Agreements, and will give notice thereof in accordance with the terms of said Deposit Agreements respectively.

12. The Committees shall continue in existence with all the powers conferred upon them by the respective Deposit Agreements under which the same were formed, and shall from time to time take such proper action under said Deposit Agreements as shall be necessary for the purpose of endeavoring to carry the Plan and this Agreement into effect as to the securities deposited with the Depositaries of the Committees; and by the adoption of the Plan and this Agreement each of the Committees agrees that so long as the Plan in its present form, or in any modified form approved by them respectively, remains unabandoned, the Committees will take such action accordingly. The indebtedness, expenses and obligations heretofore or hereafter incurred by any of the Committees, and the compensation of the Committees, shall be and continue to be a charge against and lien upon the securities on deposit with the Depositary of the particular Committee by which such indebtedness or obligation has been or may be incurred to the extent provided in said agreements.

13. The Reorganization Managers may, in their discretion and upon such terms and conditions as they shall prescribe, and either in general or particular instances, permit holders of securities to become parties to the Plan and to this Agreement without the actual deposit of such securities, and all security holders so becoming parties are entitled to be embraced within the term "Depositor" whenever used in this Agreement.

14. In their discretion the Reorganization Managers may fix or limit any period or periods within which any deposits may be made as herein provided (subject to the provisions in that behalf in the Plan), the times within which any required payment must be made, and, in their discretion, in either general or in special instances and upon such terms and conditions as they may see fit (including the imposition of penalties for late deposits) they may extend or renew any period or periods so fixed or limited. Except as otherwise in the Plan mentioned holders of securities of or claims against the Old Company who do not become parties hereto in the manner hereinabove provided within the periods limited therefor will not be entitled to deposit their securities or claims or become parties to the Plan and Agreement, or to share in the benefits

thereof and shall acquire no rights thereunder, except with the express consent of the Reorganization Managers who hereby expressly reserve the right to withhold or give such consent.

15. All the Depositors (each acting for himself and not for any others) hereby irrevocably request the Reorganization Managers to carry out the Plan and Agreement and agree that the Reorganization Managers and the Reorganization Committee respectively shall be, and they hereby are, vested with all rights, powers and authority necessary or proper to enable them to carry out the Plan and Agreement and in such manner and with such additions, exceptions and modifications as shall not substantially affect the same as the Reorganization Managers shall deem to be expedient, and irrevocably authorize the Reorganization Committee and/or the Reorganization Managers in their behalf to assign all the bonds, stock and/or claims deposited hereunder to any person or corporation for the purposes of the Plan so as to vest such person or corporation with full title thereto. By way of amplification and not limitation of the foregoing it is hereby declared that the Reorganization Managers shall be fully authorized to vote all stock deposited under or made subject to the Plan at any meeting for anything authorized by or necessary or helpful in carrying out the Plan and Agreement, and to consent as holders of said stock to any corporate action, and to sign any written consent required or permitted by law to be signed and to file the same; to institute or become parties to any legal proceedings; to compromise any litigation now or at any time hereafter existing or threatened, in whole or in part, with plenary power to enter into any agreement tending towards or deemed by them in their discretion likely to promote the consummation of the Plan and Agreement; at any time or times and at such places as they shall deem proper, to purchase or to pay, compromise or settle any indebtedness or obligations of or claims against the Old Company or any subsidiary company or any claims or demands or securities against any property deemed by the Reorganization Managers important or advisable for the New Company to acquire, or any claims, demands or securities by reason whereof or by reason of the possession whereof such property is or may be encumbered or the title

thereto affected, or any Receiver's Certificates or obligations issued or liabilities incurred or which may be issued or incurred by the Receiver, or any claims or demands that the Reorganization Managers in their discretion may deem it for the interest of the reorganization to purchase, pay, compromise or settle; for any of the purposes of the Plan and Agreement to borrow money and to charge or to pledge any of the claims or any of the deposited securities, or any property purchased or new securities to be issued, for the repayment of any money borrowed, with interest; to execute all agreements or bonds of indemnity and other bonds and therewith to charge the deposited securities or any part thereof; to do whatever in the judgment of the Reorganization Managers may be expedient to promote or procure the sale as an entirety or in parcels of any lands, railroads, properties or franchises of the Old Company or of any of its subsidiary or controlled companies, wherever situated; to adjourn any sale of any property or franchises or any portion or lot thereof; to bid or to cause anyone else to bid, or to refrain from bidding, at any sale, whether public or private, either in separate lots or as a whole, for any property or franchises or any part thereof, and at, before or after any sale to arrange and agree for the resale of any portion of the property they may decide to sell rather than to retain; to hold any property or franchises purchased by them either in their names or in the name of any person or corporation approved by them, and to apply the deposited securities and any property or securities held hereunder in satisfaction or partial satisfaction of any bid, whether made by themselves or any other person or corporation approved by them, or towards obtaining funds for the satisfaction thereof; and the term "property and franchises" shall include any and all railroads and other transportation lines, branches, leaseholds, rights in lands, stock and other interests in corporations in which the Old Company has any interest of any kind whatever, direct or indirect. The amount to be bid or paid or caused to be bid or paid by the Reorganization Managers for any property or franchises shall be absolutely discretionary with them, and in case of a sale to others of any property or franchises the Reorganization Managers, if they choose, may receive, out of the

proceeds of such sale or otherwise, any payment in any form, accruing on any deposited securities. Anything which the Plan or this Agreement provides that the Reorganization Managers and/or the Reorganization Committee may do or allow to be done, they may respectively do or allow to be done by or through such agents or agencies as they may determine, or by or through others with their approval or consent or acquiescence, or they may contract with any person or corporation that it shall be done or permitted to be done. The Reorganization Managers may assign and deliver all or any of the deposited securities to any person or corporation and may enter into such contract or contracts with such person or corporation or with anyone else as they shall deem proper for the purposes of the Plan and this Agreement.

16. The Reorganization Managers may organize or procure to be organized one or more new companies, or they may adopt or use any company or companies, whether now existing or not, and they may cause to be made sales, leases, consolidations, mergers or other arrangements by or between any such companies or any companies mentioned in the Plan, or other companies; they may make or cause to be made conveyances or transfers of any properties or securities acquired by them or with their approval; they may cause the ownership of all or any property of the New Company to be either direct ownership or ownership through the bonds or through the stock, or both, and may cause the mortgages or any of them securing the bonds of the New Company to be either a direct lien upon any particular property or lien upon the bonds or stock, or both, of any company, and may take or allow to be taken such other proceedings as they may deem proper for the purpose of the creation of the new securities provided for in the Plan and Agreement and for carrying out all or any of the provisions thereof.

17. The Company of New York has formed and is the manager of a Syndicate to underwrite the purchase of securities of the New Company by the stockholders of the Old Company in conformity with the Plan. The Syndicate, upon making the payments required by the Plan to be made in respect of any stock of the Old Company, which shall not be deposited under the Plan or by any deposi-

tors of such stock who shall fail to make the same, shall receive the securities to which the holders of such undeposited stock or such defaulting depositors would have been entitled upon becoming parties to the Plan and making such payments. The Syndicate shall be paid the compensation heretofore fixed and agreed upon with the Reorganization Committee.

18. The Reorganization Managers may construe the Plan and this Agreement, which the parties hereto agree are intended to be, and shall be, in all respects liberally construed in order to enable the Reorganization Managers and the Reorganization Committee to carry the same into effect, and their construction thereof or action thereunder, in good faith, shall be final and conclusive; they may supply any defect or omission or reconcile any inconsistency in such manner and to such extent as shall be deemed by them necessary or expedient to carry out the same properly and effectively, and they shall be the sole judges of such necessity or expediency.

19. The Reorganization Managers shall have power, whenever they deem proper, to alter, modify, depart from or abandon the Plan, or any part thereof; they may at any time or times after any such partial abandonment, or after any modification, restore to the Plan any abandoned part or parts thereof, or discard any such modification and seek to carry the same into effect as fully as if such part or parts had not been abandoned or such modifications made; they may also attempt to carry the Plan into effect rather than abandon or modify the same; any change or modification made by the Reorganization Managers shall thereupon become and be part of the Plan and Agreement. In case of any abandonment of the Plan, notice thereof shall be given as required by the Plan, and the respective Depositors shall have the rights in such case reserved to them in the Plan and in the Deposit Agreements, respectively. In case of any change or modification of or departure from the Plan which shall materially affect or alter the rights of any of the several classes of Depositors, a statement of such proposed change or modification or departure shall be filed with the Depositaries, and with each of the Depositaries of the Committees and notice of the fact of such filing shall be given as hereinafter provided in paragraph 36 and as may be required

by virtue of the provisions of any of said Deposit Agreements; and within ten days after the first publication of such notice and/or such further time as the provisions of said respective Deposit Agreements allow to the Depositors thereunder, all Depositors affected thereby may, to the extent and in the manner herein and/or in said respective Deposit Agreements permitted, exercise the rights of dissent and, to the extent and in the manner so permitted, may surrender their respective certificates of deposit therefor to the Depositary under this agreement or to the Depositary issuing the same, and withdraw their bonds or stock of such particular class or claims, or the proceeds thereof, or the substitutes therefor, then under the control of the Reorganization Managers, and/or the respective Committees, to the amount indicated in such certificates; provided, however, in every case of such surrender and withdrawal the holders of certificates of deposit severally shall make payment of their shares of the disbursements and expenses, liabilities and compensation of the Reorganization Managers as apportioned by such Reorganization Managers, and shall also make payment of their *pro rata* share of the disbursements and expenses, liabilities and compensation of the Committee with which their securities were originally deposited if so required by such Committee. Every such holder of a certificate of deposit by such surrender and withdrawal shall thereupon without any further act be released from the Plan and Agreement and shall cease to have any rights thereunder, and the exercise of such right of surrender and withdrawal shall release and discharge the Reorganization Managers, the Reorganization Committee, the respective Committees and all Depositaries from all liability of every character to every such withdrawing Depositor. Every Depositor having the rights of dissent, surrender, and/or withdrawal as aforesaid who shall not so dissent, surrender or withdraw within the time allowed as above shall be deemed to have assented to the proposed change or modification and, whether or not otherwise objecting, shall be bound thereby as fully and effectively as if he had actually assented thereto. Any change or modifications made by the Reorganization Managers as herein provided shall be part of the Plan, and all provisions and references concerning

the Plan shall apply to the Plan as so changed and modified. In every case of withdrawal herefrom of stock or claims pursuant to this Article, the Reorganization Managers shall apportion to the deposited stock and claims the share of their compensation, disbursements and expenses in the opinion of the Reorganization Managers fairly chargeable to the stock and claims, and any such apportionment made by the Reorganization Managers shall be binding upon all Depositors and shall be a charge upon the deposited stock and claims and the proceeds thereof. In case the Reorganization Managers shall abandon the Plan, the deposited securities, or the avails thereof, or any securities, claims or other property representative thereof then under the control of the Reorganization Managers, shall be delivered to the several depositors, respectively, in amounts representing their respective interests, upon surrender of their respective certificates of deposit properly endorsed, but any securities deposited under the Agreements mentioned on page 1 of the Plan shall continue to be held and dealt with by the respective Committees and Depositaries thereunder subject to the terms of said respective Agreements. In any such case of withdrawal or release herefrom any moneys paid by the Depositors of stock or claims pursuant to the provisions of the Plan, or any notes, bonds, coupons, receivers' certificates or other obligations, claims or property acquired therewith, or the proceeds thereof, remaining after deducting the share of the disbursements and expenses made and incurred by the Reorganization Managers and apportioned to the Depositors of stock or claims who shall have so paid, shall be distributed or adjusted equitably among the respective holders of certificates of deposit representing the stock or claims in respect whereof such payment shall have been made; but the Reorganization Managers shall not be liable for the loss of any such money by them disbursed for the purposes of this Plan or Agreement, or for the depreciation in value of any property or security by them acquired or received; and the Depositors of stock or claims who shall have made payments pursuant to the Plan shall have no claim for the repayment of any such moneys, except to the extent of their shares (as apportioned by the Reorganization Managers) of such moneys, or their proceeds,

remaining in the hands of the Reorganization Managers or under their control, after payment of such disbursements and expenses. Nothing in this paragraph 19 contained or in any other paragraph of this Agreement contained shall be deemed to override or change the provisions of any Deposit Agreement referred to in the Plan, and in case of any inconsistency between the terms and provisions of this Agreement and any such Deposit Agreement, the latter shall prevail and the Reorganization Managers and Reorganization Committee, respectively, shall do all things necessary to enable the several Committees mentioned in the Plan to comply with the provisions of the Agreements under which they were respectively constituted, in case of change, modification or abandonment of a plan for reorganization or in any other case.

20. The Reorganization Managers may proceed under the Plan and Agreement, or any part thereof, with or without judicial sale, and in case of judicial sale they may exercise any power hereby conferred on them either before or after sale. In every case all the provisions of the Plan and Agreement shall apply equally to and in respect of any physical properties embraced in the reorganization, and to and in respect of any securities representing any such property, it being intended that for all purposes hereunder any such property, and any security representing such property, may be treated or accepted by the Reorganization Managers as substantially identical. In the case of any claim, lien or obligation not herein or in the Plan fully provided for affecting the Old Company or any subsidiary or controlled company or any property or franchises thereof except as specifically excluded by the Plan, the Reorganization Managers may from time to time purchase or acquire the same or cause the same to be purchased or acquired, or make such compromise in respect thereto, or such provisions therefor as they may deem suitable, using therefor any cash received under the Plan or any other resources, or any securities not required for other purposes of the reorganization, and the Reorganization Managers are hereby authorized to make and/or carry out adjustments of debt, as in the Plan provided.

21. Any action contemplated in the Plan and Agreement

may be performed by the Reorganization Managers or by anyone approved by them at any time when they shall deem the reorganization advanced sufficiently to justify such course; and, as they may deem necessary, the Reorganization Managers may defer, or permit to be deferred, the performance of any provision of the Plan and Agreement, or may commit such performance to the New Company, and may cause the New Company to pay any indebtedness authorized or incurred by the Reorganization Managers or otherwise in furtherance of the Plan, and to assume any obligation which in their judgment may be necessary or proper to carry out the Plan and Agreement. The Reorganization Managers may, in their discretion, set apart and hold in trust or permit to be set apart and held in trust, or may place in trust, or permit to be placed in trust, with any Trust Company, any part of the new securities to be issued, and any cash which may be received from sales of new securities or otherwise, as they may deem suitable for the purpose of securing the application of the same to any of the purposes of the Plan and Agreement.

22. From time to time, for the purpose of carrying the Plan and Agreement into effect, or of obtaining assents thereto, the Reorganization Managers, either generally or in special instances, may make or ratify, or permit to be made or ratified, contracts with any person or corporation or committee representing securities of any class in respect of any matter connected with the Plan and Agreement, and in their discretion, either generally or in special instances, and upon such general or special terms or conditions as they may deem proper for the purposes of and in conformity with the Plan, they may arrange to procure the deposit of any Old Company securities or creditors' claims, and by loan or guaranty, or by the sale of new securities to be created, or otherwise, on such terms, conditions and rates of interest as they may deem proper, may obtain or permit to be obtained any moneys required to carry out the Plan and Agreement, including such sums as the Reorganization Managers may deem it expedient to provide for the use of the New Company; and for the performance of any such contract, the Reorganization Managers may charge or permit to be charged the deposited securities and the new securities

to be issued, and also may pledge the same or permit the same to be pledged for the payment of any moneys borrowed, with interest, and for the performance of any other obligations incurred under the powers herein conferred. The Reorganization Managers may employ counsel, agents and all necessary assistants, and may incur and discharge any and all expenses by them deemed reasonable for the purposes of this Plan, including the expenses and compensation of the Reorganization Managers and the Depository and all expenses in connection with the preparation of the Plan and Agreement and the issue of certificates, legal expenses, expenses for advertising, printing and all other expenses in any manner connected with the Plan and Agreement or which they may deem it expedient to incur in undertaking to promote any of the purposes thereof.

23. The Reorganization Managers, for the purposes of and in conformity with the Plan may prescribe or approve the form and terms of all charters, rules, regulations and by-laws of any corporation or corporations utilized in reorganization, and of all bonds, certificates of stock and other securities at any time to be issued, and of the mortgages, and other instruments at any time to be issued or executed. They may create and provide for all necessary trusts and may nominate and appoint trustees thereunder. They may select and cause to be selected or otherwise designate or constitute the members of the board of directors of the New Company who are to serve in the first instance, and they may cause said board of directors to be classified so that the terms of office of the different classes of directors will expire in successive years. The Reorganization Managers shall have power to make equitable provision for any case of lost or destroyed bonds, coupons or certificates of stock, and to recognize and admit the same to participation in the Plan and this Agreement, and to provide for and make or cause to be made such issues of scrip as may be necessary properly to represent any fractional interest in the new securities, and to such extent as they shall deem necessary they may distribute such scrip to the Depositors and may, in their discretion, settle for and adjust any such fractional interest in cash and credit or pay such cash to the Depositors in lieu of distributing to them such scrip. In case they shall deem it

advisable for any reason the Reorganization Managers are authorized to issue and to cause to be issued temporary or interim certificates to represent the new securities or any of them.

24. The Reorganization Managers for the purposes of and in conformity with the Plan may dispose of, or consent to the disposition of, any new securities not required for delivery to Depositors, and may use the same or allow the same, or the proceeds thereof, to be used for the purpose of carrying out the reorganization and for the benefit of the New Company in such manner as they may deem expedient and advisable. At or after the time of the creation of the new securities the Reorganization Managers may take such action as they may deem necessary to guard against the issue of securities in any manner or to any extent inconsistent with the purposes of the Plan.

25. The Reorganization Managers may at any time, except as expressly otherwise provided in the Plan, make contracts binding upon the New Company for the acquisition of property for use in the operation of the New Company, or make any other contracts which they may deem advisable in reference to the property of the New Company, or any of the companies mentioned and referred to herein, and generally they may do or cause to be done any and all things which in their opinion will aid in the preservation, improvement or development of any property in which the Old Company has an interest, direct or indirect, and in carrying out the Plan.

26. The amount of the expenses (including counsel fees) and compensation of all Committees is to be determined by agreement between the Reorganization Managers and the respective Committees. If, in any case, no agreement can be reached between the Reorganization Managers and a Committee, the decision is to be made by a majority vote of the Chairmen of the four Committees named in the Plan and a representative of the Reorganization Managers.

27. The Reorganization Managers shall have the control and direction of the Plan and Agreement. The firm of shall be the Reorganization Managers. Said firm shall act as a co-partnership, and in case of any change in the membership of said firm, its successor firm, as from time to time con-

stituted, shall continue as Managers, with all the powers, right and title vested in the Reorganization Managers hereunder. In case the Reorganization Managers shall resign, their successors shall be chosen by the Reorganization Committee by unanimous vote and shall be vested with all the powers and charged with all the duties of Reorganization Managers.

28. The Reorganization Managers and the Reorganization Committee undertake in good faith to endeavor to execute the Plan and Agreement; but they do not assume, nor does any Committee or depositary assume, any personal responsibility for the success of the Plan or Agreement or any part of either, or for the result of any steps taken or acts done thereunder or for the purposes thereof.

29. The Reorganization Managers and the Reorganization Committee and the Committees (and the respective members thereof) shall not, nor shall any of them, nor shall any Depositary, be personally liable for any act or omission of any agent or employee selected by them or any of them, or for any error of judgment or mistake of fact or law, or in any case, except for his, its or their own willful misconduct; and neither the Reorganization Managers nor the Reorganization Committee nor the Committees nor any of them, nor any member thereof nor any Depositary shall be personally liable for the acts or defaults of the others. The Reorganization Managers and the Reorganization Committee may act by any agent and may delegate any authority as well as any discretion to any such agent. The Reorganization Committee, the Reorganization Managers, the Committees, or the Depositaries, or any officer or director thereof, or anyone connected with them, the trustees of any mortgage and any officer or director or person connected with the Old Company or the New Company, may be or become pecuniarily interested without accountability in respect thereof, in any contracts, property or matters with which the Plan or Agreement or the New Company or the Old Company is concerned, including participation in or under any syndicate, whether or not mentioned in the Plan; and any such person or corporation may also become a Depositor under the Plan, and in such event shall have the same rights, benefits and obligations thereunder and in respect of securities of the

New Company to be received, and of all payments to be made thereunder, as other Depositors, and may buy and sell certificates of deposit or undeposited securities in the same manner and with the same rights as any Depositor.

30. The acceptance of new securities by any Depositor shall estop such Depositor from questioning the conformity of such securities in any particular to any provisions of the Plan, or the propriety or expediency of any act done or arrangement made in carrying the Plan into effect.

31. The Reorganization Managers may appoint a successor or successors to.....as Depositaries. Any direction given by the Reorganization Managers shall be full and sufficient authority for any action of any Depositary or other custodian or agent.

32. The accounts of the Reorganization Managers shall be filed with the board of directors of the New Company within one year after the reorganization shall have been completed, unless a longer time shall have been granted by the board of directors thereof. Such accounts, unless disapproved by such board of directors within sixty days after such filing, shall be final, binding and conclusive upon all parties having any interest therein; and thereupon the Reorganization Managers and the Reorganization Committee shall be discharged.

33. The enumeration of specific powers hereby conferred shall not be construed to limit or restrict the general powers herein conferred or intended so to be, and it is hereby distinctly declared that it is intended to confer on the Reorganization Managers in respect of all securities and claims deposited or to be deposited hereunder or assenting hereto and in all other respects, any and all powers which the Reorganization Managers may deem necessary or expedient in or towards carrying out or promoting the Plan and Agreement in any respect as now existing, or as the same may be modified or amended, even though any such power be apparently of a character not now contemplated; and the Reorganization Managers may exercise any and every such power as fully and effectually as if the same were herein distinctly specified, and as often as, for any cause or reason, they may deem expedient. The methods and means to be adopted for or towards

carrying out the Plan and Agreement shall be entirely discretionary with the Reorganization Managers.

34. All securities and claims deposited under or subject to the Plan and Agreement, and all securities and claims purchased or otherwise acquired thereunder, shall remain in full force and effect for all purposes, and except as mentioned in the Plan shall not be deemed to have been merged, satisfied, released or discharged by any delivery of new securities, and no legal right or lien shall be deemed released or waived, but said securities and claims and any judgment or judgments upon any thereof, and all liens and equities shall remain unimpaired and may be enforced by the Reorganization Managers or by anyone to whom the same, with the assent of the Reorganization Managers, may have been assigned, or by the New Company, until paid or satisfied in full or expressly released, as they may be, by the New Company. Neither the Reorganization Managers nor the Reorganization Committee nor any Depositors who are creditors of the Old Company shall by executing this Agreement or by becoming parties hereto, release, surrender, waive or merge in favor of any stockholders or other creditors of the Old Company any lien, right or claim. Any purchase or purchases made in pursuance of, or for the purpose of carrying out, the Plan under any decree for the enforcement of any such lien, right or claim, shall vest the property purchased in the purchaser and his or their assigns free from all interest or claim on the part of any such stockholders, creditors or other parties. No right is conferred or created hereby, nor is any trust, liability or obligation (except the agreements herein contained in favor of the Depositors) created by the Plan and Agreement, or assumed hereunder, or by or for any New Company in favor of any creditor of or any holder of any claim whatsoever against the Old Company or in favor of any company now existing or to be formed hereafter (whether such claim be based on any bonds, stocks, securities, leases, guaranties, notes, debts or otherwise) with respect to any securities or claims deposited or held under this Agreement, or any moneys paid to or received by the Reorganization Managers or the Depositaries, or with respect to any property acquired by purchase at any judicial sale or otherwise, or with

respect to any new securities to be issued hereunder, or with respect to any other matter or thing; and this Agreement shall not be construed to create any trust or obligation to or in favor of any person or corporation other than the parties hereto or as mentioned in the Plan.

35. All moneys paid by Depositors hereunder shall be held by one or more of the Depositaries subject to the order of the Reorganization Managers. The Reorganization Managers shall apply the same, and any other moneys which may come within their control, for the purposes of the Plan and Agreement as from time to time may be determined by them; and their determination as to the propriety and purpose of any such application shall be final and nothing in the Plan shall be understood as limiting or requiring the application of specific moneys to specific purposes. Any obligation in the nature of floating debt or otherwise against any company or property embraced in the Plan, either as proposed or carried out, or any securities held as collateral to any such obligation, may be acquired or extinguished or held by the Reorganization Managers or anyone approved by them, at such time, in such manner and upon such terms as the Reorganization Managers may deem proper for the purposes of reorganization; and nothing in the Plan and Agreement contained is intended to constitute or create, or shall constitute or create, any liability or trust in favor or in respect of any such obligation.

36. Except as herein or in the Plan otherwise expressly provided, all calls or notices required or permitted to be made hereunder or under the Plan for payments or for the surrender or presentation of certificates of deposit issued hereunder, and all notices fixing or limiting any period for the deposits or for such payments, and all other calls and notices hereunder, shall be published in two newspapers regularly published and issued in the Borough of Manhattan, New York City, twice in ten days, in each case on any day of the week. Any call or notice whatsoever, when so published by the Reorganization Managers, shall be taken and considered as though personally served upon all the parties hereto and upon all parties bound hereby as of the respective dates of the first publication thereof, and, except as herein or in the Plan otherwise expressly pro-

vided, such publication shall be the only notice required to be given under any provision of this Plan and Agreement.

37. An original of this Agreement signed by the Reorganization Managers and the Reorganization Committee with the Plan annexed thereto shall be lodged with the....., at its office at....., and with....., at its office at.....and with the respective Depositaries under the Deposit Agreements. The Plan and this Agreement shall bind and benefit the Reorganization Committee, and the Reorganization Managers and the Depositors hereunder, and their and each of their survivors, heirs, executors, administrators, successors and assigns.

38. The term "Receiver" as used herein shall be deemed to include any past, present or successor receiver of the Old Company appointed by the District Court of the United States for the Northern District of Illinois.

39. The terms "deposited securities," "securities deposited under the Plan," "deposited stock" and "stock deposited under the Plan" shall be deemed to include securities or stock, as the case may be, held by the Depositaries or any agent of the Reorganization Managers, or by any Depositary for any committee under any deposit agreement herein named (which committee shall have adopted and approved this Plan and Agreement).

IN WITNESS WHEREOF, the Reorganization Managers and the Reorganization Committee have respectively affixed their signatures hereto as of the day and year first above written and the Depositors have become parties hereto in the manner above stated.

Contract for Formation of Corporation—Exclusive Services to be Rendered By One of The Parties—Transfer of Stock.

Watson *v.* Gugino, 204 N. Y. 535, 98 N. E. 18.

AGREEMENT made....., between.....hereinafter called the "Present Owner" and.....hereinafter called the "Investor":

WHEREAS, the said parties have agreed to organize a corporation pursuant to the laws of the State of....., to con-

duct the business of.....heretofore conducted by the Present Owner,

Now, THEREFORE, IN CONSIDERATION of the mutual covenants herein contained, the parties agree as follows:

1. The Present Owner agrees to transfer to said corporation to be formed all of his interest and property now owned by him in the copartnership of.....and in addition the sum of \$.....in cash.

2. The Investor agrees to set over and transfer unto said corporation to be formed all the property this day sold to him by.....heretofore the partner of the Present Owner in said business, said property being all the interest of said Investor in the copartnership business of _____, and also to pay to said corporation and invest therein the sum of \$.....

3. The Present Owner hereby covenants that the title in all the property used in the copartnership business of..... is free and clear of any encumbrance and that the machinery used in the plant of.....is in perfect running order and in good repair.

4. Upon the organization of the corporation..... shares of the stock thereof shall and will be issued to the Present Owner and he is to be President and Manager thereof; shares of stock of said corporation shall and will be issued to the Investor, and he is to be vice-president of said corporation; shares of stock shall and will be issued to..... who shall be the secretary and treasurer of said corporation, and the remaining shares of stock shall be issued to.....

5. The Present Owner agrees to devote his whole time and attention to the corporation's business, and is to receive a weekly salary of \$..... The Investor is to receive a weekly salary of \$....., and is to have entire charge of the office management of the business. All checks of the corporation shall be signed by the treasurer and countersigned by the President.

6. The Investor hereby gives to the Present Owner an option of..... shares of stock of said corporation, and the said investor agrees to sell to the Present Owner..... shares of

stock at \$. per share at any time within. months. Upon demand and in the event of such transfer of stock, an inventory is to be had and the proportion of dividends apportioned as of the date of transfer before said transfer.

7. If by reason of illness or any other cause, the Present Owner is unable to give his entire time to the business of the corporation, then the Present Owner agrees to provide a person as fully as competent as he is to perform such duties, said person to be acceptable to the Investor.

Trust Agreement—Stock in Corporation—Provision for Continuation by Successor Trustee of Separate Partnership of Trustee

AGREEMENT, made this. day of. by and between. hereinafter described as the "Trustee," and. hereinafter described as the "Stockholders," and. hereinafter described as the "Trustee's Partner";

WHEREAS, the said Trustee and the Trustee's Partner are copartners doing business at No. City of., State of., under the firm name and style of. hereinafter referred to as the "Partnership," and

WHEREAS, the Stockholders are all the stockholders of the. Company hereinafter referred to as the "Company," and hold stock in the said Company as follows: and

WHEREAS, the Trustee desires to hold his interest in the said Company in trust for the said Stockholders and for their successors in interest as stockholders in the Company in the manner more particularly set forth in this agreement; and

WHEREAS, the Trustee's Partner is willing to consent to such arrangement;

Now, THEREFORE, in consideration of the premises and of the mutual promises herein contained, IT IS AGREED by and between the parties hereto:

1. Upon the signing hereof, the Stockholders, with the

exception of shall respectively pay over to the Trustee the sums set opposite their names: receipt of which sums is hereby acknowledged by the Trustee.

2. (a) The Trustee hereby declares that from the date hereof he holds and will hold his interest in the said Company IN TRUST for the said Stockholders, in proportion to their said stockholdings, hereinbefore set forth, in the Company, so long as they shall maintain such proportionate stockholdings; and thereafter, for the person or persons who may for the time being be stockholders of the Company, in proportion to their respective stockholdings, SUBJECT, HOWEVER, to the conditions and limitations hereinafter set forth.

(b) The Stockholders hereby severally agree that in the event that the Trustee shall suffer any loss by virtue of his membership in the Company, or if he shall in his uncontrolled discretion deem it necessary or advisable to invest any further money or other capital in the said Company (including any payment to the personal representatives of the Trustee's Partner under paragraph 5 hereof), they shall and will each, upon demand, pay to him respectively such proportion of the loss so suffered by him, or the additional money or other capital so invested by him, as their respective beneficial interests in this trust shall bear to the total beneficial interests in the trust. The said Stockholders further severally agree that should any one or more of the said Stockholders acquire a larger proportionate stockholding in the Company than he now holds, his obligations under this subdivision shall be increased in proportion to such increase in his proportionate stockholding. The Stockholders further severally agree, each for himself, that they will not alien any of their shares of stock in the Company without obtaining from the alienee of the stock a legally enforceable agreement in writing to be bound by the provisions of this contract; and any heir, executor, administrator or assign of any party of the second part may voluntarily give such agreement. The provisions of this subdivision shall be binding upon the heirs, executors, administrators and assigns of the Stockholders.

(c) The duration of this trust shall be for the lives of the Trustee and of the Trustee's Partner, and the life of the survivor

of them, or until such date as this trust may be sooner terminated in accordance with the provisions hereof. This trust may at any time be revoked or terminated by the execution of an instrument revoking and terminating the said trust by the Trustee and by a majority in interest of such of the Stockholders as shall still retain their stock in the Company and such other holders of stock in the Company as shall have given the agreement required by subdivision (b) of this paragraph. At any time after the death of the Trustee the said trust may be revoked and terminated by the execution of such an instrument by a majority in interest of such of the Stockholders as shall still retain their stock in the Company and such other holders of stock in the Company as shall have given the agreement required by subdivision (b) of this paragraph.

(d) Should the Trustee die, resign or become otherwise incapacitated during the life of this trust, a new trustee shall thereupon be appointed by such of the Stockholders as shall still retain their stock in the Company and such other holders of stock in the Company as shall have given the agreement required by subdivision (b) of this paragraph. Any appointment in writing duly executed and acknowledged by a majority in interest of the parties qualified to make such appointment shall be valid hereunder. Should any substituted trustee so appointed fail to qualify, or having qualified, die, resign, or become otherwise incapacitated during the life of this trust, another substituted trustee may in the same manner be appointed in his place; and such substituted trustees may continue to be appointed in the same manner during the life of this trust as often as may be necessary to fill vacancies in the office of trustee. No bond or other security shall be required of the Trustee or of any substituted trustee appointed hereunder.

(e) Any income received by the Trustee or by any substituted trustee hereunder by virtue of his membership in the Company shall be received subject to this trust. The said Trustee or substituted trustee shall distribute to each of the Stockholders, and to each of such alienees or successors in interest of the Stockholders as shall have given the agreement provided for in subdivision (b) of this paragraph, such proportionate share of the income so received as the stockholding of

such person in the Company shall bear to the total outstanding stock of the Company. But in the event that any of the Stockholders or any of their successors in interest, shall have aliened any of their stock in the Company without obtaining the agreement provided for in subdivision (b) of this paragraph; or in the event that such stock shall have become the property of any person or persons who have not given such an agreement: then the Trustee or his successor as trustee, may, at his option, either pay over to such stockholder in the Company the share of any income so received proportionate to such stockholder's proportionate stockholding in the Company, or retain such proportionate share in trust to secure the proportionate indemnity of the said party of the first part or his successor as trustee for any losses suffered or additional money or other capital invested as set forth in subdivision (b) of this paragraph, or pay over part of such share and retain part of such share. The fact that the Trustee or his successor as trustee may at any time pay over any such share shall not preclude him from subsequently retaining other shares of income thereafter received, nor shall his retaining of any share preclude him from afterwards paying over other shares of income thereafter received. If at any time the said trustee shall suffer any loss or invest any additional money or other capital as set forth in subdivision (b) of this paragraph, the said trustee may indemnify himself proportionately out of any moneys so retained or any income thereof. The money so retained and any income thereof, shall, subject to the obligation secured by its retention, be held in trust for the holder, at the time of its receipt, of the stock which it represents, and may be paid over to such individual by the party of the first part or his successor as trustee at any time at his option, and shall be so paid over, together with any income thereof, but less any sums taken therefrom by way of indemnity, not later than the termination of this trust.

(f) The purpose of this trust is to continue the business of the Company in the same manner as it is at present conducted, giving the Stockholders and their successors in interest, however, a beneficial interest in the interest of the Trustee therein. It is accordingly expressly understood that the Trustee and his

successor as trustee hereunder, may continue to engage in the business of the Company free from any of the limitations imposed by the law upon investment of trust funds; that he may conduct such business in accordance with his uncontrolled discretion; and that his sole duty hereunder shall be to distribute and pay over to the beneficiaries thereof, in accordance with the terms of this agreement, any sums received by him by virtue of his membership in the Company.

(g) The trustee shall not be bound to take notice of any transfer of shares of stock of the Company unless he shall have been notified in writing of such transfer and shall have received a sufficient agreement from the transferee to be bound by the terms of this agreement.

3. The Trustee's Partner hereby consents to and ratifies the foregoing arrangement between the Trustee and the Stockholders. Subject to the terms hereof, the partnership agreement between the Trustee and the Trustee's Partner dated, together with any modifications thereof which have been made by written or oral agreement of the parties thereto or by their practice thereunder, is in all respects re-affirmed; excepting that it is understood and agreed that the Trustee will henceforth hold all his rights under the said agreement subject to the trusts hereby created, and except that the term of the said partnership shall be for the life of such Trustee's Partner, or until the sooner termination of the trust hereby created instead of for the term set forth in the said partnership agreement. The trustee hereunder, together with the Trustee's Partner, shall have the power and authority to make such modifications in the said partnership agreement (including any modification of the salary of the Trustee's Partner thereunder or in the provisions of paragraph of said partnership agreement) as to them in their uncontrolled discretion may seem proper; and the consent of the Stockholders hereto to any such modification shall not be necessary.

4. Should the Trustee die during the continuance of this trust, the partnership of shall not thereby be dissolved, but the Trustee's Partner agrees that he will continue the said partnership, subject to the terms of the agreement creating the said

partnership, with the person or persons who may become substituted trustees pursuant to the provisions of subdivision (d) of paragraph 2 hereof. This provision shall also apply in the event of the death, resignation or incapacity of any of the trustees hereunder, the Trustee's Partner agreeing to continue the partnership in partnership with any substituted trustee or trustees so duly appointed.

5. Should the Trustee's Partner die during the term of this trust, the Trustee or his successor as trustee may, at his option, continue in business under the name of the partnership subject to the Trusts hereby created. Such option shall be exercised by the giving of written notice thereof, by mail or personally, to the personal representatives of the Trustee's Partner within thirty days after the death of said Trustee's Partner, or within fifteen days after the qualification of such personal representatives. Should the Trustee or his successor as trustee, exercise the said option, the said Trustee, or his said successor, shall become vested with the property of the partnership; the Trustee, or his said successor shall, within six months after such death, pay to the legal representatives of the Trustee's Partner such sum as shall fairly equal the value of the interest of the party of the third part in the assets of the partnership; but for the purpose of this provision, the goodwill and trade name of the business shall not be deemed assets, and no value shall be placed thereon.

Should the Trustee's Partner die after the death of the Trustee, a similar option shall exist in favor of the then beneficiaries of the trusts hereby created, or of the person who may at the time be trustee hereunder for the benefit of such beneficiaries.

6. Upon the termination of this trust the persons who may then be stockholders of the Company shall be entitled to be paid, proportionately to their then stockholdings, any sums received by the party of the first part, or his successor as trustee, by way of distribution of assets of the Company.

IN WITNESSETH WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

Agreement for Purchase of Stock in Corporation—Payment of Part of Purchase Price from Dividends—Restrictions against Alienation

AGREEMENT, made.....between.....
, hereinafter described as the "Seller" and
of.....hereinafter described as
 the "Purchaser."

WHEREAS, the Seller is the owner and holder of.....
, shares of the capital stock of.....a corpora-
 tion (hereinafter referred to as the Corporation) organized
 and existing under and by virtue of the laws of the State of
of the par value of One Hundred dollars
 (\$100.00), each, aggregating the sum of \$.....; and

WHEREAS, the Purchaser is desirous of purchasing upon the
 terms, conditions, stipulations and agreements hereinafter
 contained,.....shares of the capital stock of said
 Corporation, for the sum of \$.....

Now, THEREFORE, in consideration of One Dollar, the receipt whereof is hereby acknowledged, and of the mutual covenants and agreements hereinafter contained, this agreement WITNESSETH:

The Purchaser agrees to purchase from the Seller and the Seller agrees to sell to the Purchaser.....shares of the capital stock of the Corporation, for the sum of \$.....

The Purchaser has paid on account of said purchase price the sum of \$....., the receipt whereof is hereby acknowledged.

The balance of the purchase price, namely \$....., shall be satisfied and paid in the following manner:.....% of any and all dividends which shall be declared and paid to the Seller, on the capital stock now issued and outstanding in the name of the Seller, by the said Corporation, shall be credited to the Purchaser on account of the purchase price of the stock so to be purchased by him, as aforesaid.

When the amount credited to the Purchaser, shall aggregate the purchase price, namely \$....., together with interest on said sum, or the unpaid balance thereof, at

the rate of six per cent, per annum from the.....day of, the Seller shall assign, and transfer to the Purchaser the said....., shares of capital stock of the said Corporation.

5. Until the full amount of the purchase price, with interest as aforesaid, shall have been thus paid to the Seller, the Seller may exercise all the rights and powers, as stockholder and owner of said....., shares of stock, to the same extent as if this agreement had not been made. None of said stock shall be transferred to the Purchaser until the full amount of the purchase price, with interest as aforesaid, shall have been paid, nor shall the Purchaser be entitled to receive any of said stock, as aforesaid, until the amount aforesaid, with interest, has been paid by him.

6. If, by reason of death, or otherwise, the employment of the Purchaser, by the Corporation, shall terminate before the purchase price of said stock shall have been fully paid, as herein provided for, said Purchaser, or his legal representatives, shall, on demand, be entitled to receive from the Seller such sum as shall stand to his credit, as having been paid on account of the purchase price of said stock; and upon making said payment to the Purchaser or his legal representatives, all his and their rights under this agreement shall cease and come to an end.

7. In the event that said Purchaser shall, pursuant to the terms of this agreement, become the owner of said stock, the said Purchaser hereby agrees that he will not sell, assign, transfer or pledge said stock, without giving the Seller..... days' notice, in writing, of his intention so to do, in which event the said Seller shall have the right to purchase and acquire said stock, within said.....days, by paying said Purchaser the par value thereof, and said stock, when issued to the said Purchaser, shall have endorsed upon it a statement, or notice, to the effect that said stock is incapable of sale, assignment, transfer or pledge, except pursuant to the terms of this agreement. Provided, however, that if the right to purchase and acquire the stock of the Purchaser, pursuant to the terms of this paragraph, shall accrue, subsequent to five years after the Purchaser has become the owner of said stock, the

purchase price to be paid by the Seller to the Purchaser for his stock shall be the book value thereof as the same appears upon the books of the Corporation at that time.

8. It is agreed that no involuntary sale, or transfer, of said stock, by operation of law, or otherwise, shall in any wise affect the right of said Seller, within.....days after learning of such involuntary sale, or transfer, to purchase said stock upon the same terms as if said Purchaser had given written notice of his intention to sell, assign, transfer, mortgage or pledge said stock, the said Seller being hereby given all such rights, liens, in and to the said stock, as will enable it to effectively and effectually become the purchaser and owner of said stock, upon the terms aforesaid, notwithstanding said involuntary sale, or transfer.

9. The Seller shall have the right, at any time before the purchase price of said stock shall have been fully paid by the Purchaser, in accordance with the terms thereof, to sell all of its stock in said Corporation, including the stock which the said Purchaser has in and by this agreement agreed to purchase, and out of the net proceeds of the sale of all of its stock, the said Purchaser shall be entitled to receive from the Sellerof the net amount realized by it for all of its stock, after deducting from said.....such balance of the purchase price as said Purchaser shall not yet have paid for the stock which he has herein agreed to purchase, provided, however, that the Purchaser shall have the right to purchase said stock at the same price at which the Seller proposes to sell the same, by paying a cash deposit of.....per cent, of said price, within.....days of being notified of said proposed sale, and the balance of said price, within..... days thereafter.

10. It is agreed that the Purchaser shall not have the right to assign this agreement, or any rights thereunder, nor shall the same be assignable by operation of law, except as hereinabove specifically provided.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

EMPLOYMENT CONTRACTS ¹

SALESMEN'S CONTRACTS

Contract Employing Salesman—Exclusive Agency—Limited Territory—Drawing Account Provision with Agreement to Repay Unearned Drawings—Option for Renewal.

Williston—Sections 43, 90, 1015n.

AGREEMENT madebetween.....
.....hereinafter described as the Employer, and.....
.....hereinafter described as the Salesman:

1. The Employer hereby employs and the Salesman agrees to and does hereby accept the said employment, as salesman for the Employer for a period of.....beginningand ending.....

2. The Employer agrees that the Salesman shall have the exclusive agency for the selling of its products in the States of

3. The Salesman agrees that he will devote his entire time and energies exclusively to the sale of the product of the Employer in said territory, and that he will not sell the product of the Employer in any other territory, unless expressly directed to do so by the Employer, and that he will not engage in any business for himself or any other person, firm or corporation.

4. The Employer may at any time require the Salesman to sell its product in territory other than described in the paragraph "2" hereof, in which event the Salesman agrees to sell in such territory as may be required, and for such time only as may be required by the Employer.

5. The Salesman shall have a drawing account of \$..... per.....which shall be payable.....
The sum of \$.....thereof shall be deemed to have been paid to the Salesman without any obligation to account

¹ See pages 560 to 566, for contracts of employment in the motion picture industry.

therefor. The remaining \$. thereof shall be charged against commissions earned as described in the next paragraph, and the Salesman agrees to repay the same or any part thereof to the extent that the commissions earned by him fail to equal the said. % of the drawing, as may be computed in accordance with the provisions of the next paragraph, to the Employer.

6. The Employer agrees to pay the Salesman a commission of \$. for. ordered through the Salesman and delivered by the Employer, including duplicate orders from the territory hereby granted to the Salesman, and the said commission shall be deemed earned upon the delivery by the Employer of its product to the purchaser. The Employer reserves the right to reject any orders received from or through the Salesman. There shall be a settlement of the account for commissions and a payment of commissions at the end of the term of this contract.

7. The Salesman will pay all expenses incurred by him.

8. The Salesman agrees that he will make sales of the Employer's product and secure orders therefor only upon prices fixed by the Employer, and shall in no event quote terms or prices in any manner different from those authorized by the Employer, in writing.

9. The Salesman agrees to make daily written reports to the office of the Employer, as to the business done on each day.

10. The Salesman represents and hereby warrants that he will produce, bona fide orders of first class accounts aggregating \$., and in the event that for any of these months the Salesman fails to obtain such orders, the Employer may and is hereby granted the absolute right to cancel this contract on or before \$.

11. This contract constitutes the whole agreement between the parties. There are no terms, obligations, covenants or conditions other than contained herein. No variation thereof shall be deemed valid unless signed by the parties with the same formalities as this contract. Every term of this contract shall be deemed of the essence thereof and any breach shall be deemed of the very substance of the contract. No

waiver of any breach of any term, condition or obligation hereof shall be deemed a waiver of similar terms nor shall a waiver of any breach be deemed a waiver of subsequent breaches of the same or other nature.

12. At the end of the term of this contract, if the same shall have been fulfilled in all respects by the Salesman, he shall have the option to renew it upon the same terms and conditions as contained herein for a further period of one year commencing.....and ending..... provided, however, that this further condition be complied with, that during the term of this contract, the Salesman shall have produced bona fide orders of first class accounts which shall have been approved and filled by the Employer, to the extent of at least.....

Contract between Employer and Salesman—Furnishing Bond—Repayment of Overdrawn Commissions—Collection of Moneys for Principal.

Williston—Sections 43, 90, 1015n.

AGREEMENT made.....by..... hereinafter called the Employer, and.....hereinafter referred to as Salesman, WITNESSETH:

1. The Employer hereby engages the Salesman as a salesman and the Salesman agrees to serve the Employer in such capacity.

2. The Salesman agrees to furnish the Employer a surety bond for.....Dollars, which bond must be satisfactory to the Employer, said bond to be furnished withinmonths from the date hereof.

3. The Salesman agrees to devote his whole time and energy to his duties under this agreement.

4. The Employer agrees to pay the Salesman as compensation hereunder, an amount equal to.....of the difference between the prices known as the salesman's basis prices and the prices paid by the customers, said basis to be as set forth in Schedule A attached hereto and hereby made part hereof. In the event that the present market prices of the products listed on Schedule A or any of the ingredients

thereof, shall be increased, then and in that event, the prices listed on Schedule A shall be correspondingly increased.

5. The Employer agrees to pay the Salesman \$. per week, which sum shall be charged against and deducted from moneys earned by him hereunder. If, however, commissions earned shall be less than the sum drawn hereunder, said Salesman agrees that the difference shall be a debt due and owing from and by him to the Employer and which he agrees to pay. Commissions allowed and paid on accounts which shall thereafter fail or remain unpaid, shall be charged against commissions.

Northwestern Mutual Life Insurance Co. *v.* Mooney, 108 N. Y. 118, 15 N. E. 303.

Lobsitz *v.* Leffler, 140 App. Div. 14, 124 N. Y. Supp. 533; Affirmed 206 N. Y. 703, 99 N. E. 1110;

Durante *v.* Raimon, 136 App. Div. 448, 120 N. Y. Supp. 881; Wolfsheimer *v.* Frankel, 130 App. Div. 853, 115 N. Y. Supp. 958;

Hollender *v.* Friedenber, 60 Misc. 566, 112 N. Y. Supp. 467;

Strauss *v.* Arthur Wolfsohn Co., Inc., 95 Misc. 171, 159 N. Y. Supp. 78;

Samuels *v.* Bloom, 91 Misc. 7, 154 N. Y. Supp. 189;

Auerbach *v.* Ramer, 80 Misc. 645, 141 N. Y. Supp. 848;

Kane *v.* Auto Laks Mfg. Co., 172 N. Y. Supp. 275;

Isaacson *v.* Andrews, 64 App. Div. 408, 72 N. Y. Supp. 177; 69 App. Div. 430, 74 N. Y. Supp. 1039;

Schwerin *v.* Rosen, 45 Misc. 409, 90 N. Y. Supp. 407;

Jos. Beck & Sons *v.* Danaher, 93 Misc. 537, 157 N. Y. Supp. 503.

6. It is agreed that the Salesman shall have the right to collect money for and on behalf of the Employer from customers to whom he shall sell under this agreement, it being expressly understood and agreed that such collections are made by the Salesman as agent for the Company.

7. It is agreed that the Employer shall be the sole judge in the matter of extending credits and shall have the absolute right to fill or reject any order for goods sold hereunder.

8. It is agreed that the relation between the parties hereto

is that of employer and employee and nothing herein contained shall be construed to create the relations of partners, anything herein contained to the contrary in anywise notwithstanding.

9. It is agreed that this contract may be terminated by either party hereto on days' written notice to the other, said notice to be sent by registered mail to the address of the parties as hereinabove set forth.

Salesman's Contract—with Authority to Employ Sub-salesmen

Williston—Sections 43, 90, 1015n.

AGREEMENT made between hereinafter called the Employer, and residing at hereinafter called the Salesman:

1. The Employer hereby employs the Salesman, to sell its merchandise in the territory of

2. The Salesman accepts said employment and agrees to devote his entire time and energy to selling the merchandise of the Employer in said territory and agrees not to engage in any other business, directly or indirectly.

3. The Salesman agrees to travel in and cover the territory assigned to him, personally and regularly.

4. The Employe agrees to pay to the Salesman five (5%) per cent. commission on net selling price of all merchandise shipped to customers in said territory during the term of this agreement upon orders received during the term of this agreement.

5. The Salesman shall have a drawing account of \$. per week, to be charged against commissions earned and to be payable weekly.

6. The Employer shall have the right to suspend the drawing account at any time that the amount of commissions earned by the Salesman is insufficient to pay the same, and the Salesman agrees to repay to the Employer, upon demand, and in any event upon the termination of his employment, whether by

expiration of this contract or for any other cause, any excess of the drawing account over commissions earned.

7. The Employer agrees to deliver to the Salesman monthly a statement of the shipments upon which he is entitled to commissions during the preceding month.

8. The Salesman shall have the right to employ sub-salesmen to assist him in his territory, upon the written approval of the Employer.

9. The said sub-salesmen shall be paid a salary of a and \$ a week to cover carfare and all other incidental expenses for operating in their home town, and shall be allowed a maximum of \$ per day, in excess of actual transportation expenses, for hotel expenses when they are on the road. The Salesman agrees to obtain weekly expense accounts in detail from each sub-salesman and to submit the same with his approval to the Employer. No sub-salesman shall be continued in the employ of the Employer or Salesman unless he shall obtain at least \$ worth of orders which shall be accepted by the Employer, each week, in operating in his home town, and \$ worth of orders per week when on the road. The sub-salesman shall be paid a bonus of per cent. on the net selling price of all goods shipped pursuant to orders obtained by them and accepted by the Employer in excess of their minimums of and Sub-salesmen's salaries, bonuses and expenses shall be borne equally by the Employer and the Salesman, and the Salesman's share thereof shall be deducted from his drawing account, if any, and charged against him in the Employer's monthly statement.

10. Either party shall have the right to terminate this contract by giving the other party thirty (30) days' written notice by registered letter addressed to the parties at the addresses given in this contract.

EMPLOYERS' CONTRACTS WITH EXECUTIVES

Employer and Manager, with Provision for Share of Profits to be Paid Partially in Stock of Company—To Continue from Year to Year unless earlier terminated.

Williston, Sections 90, 104, 140, 495, 503, 576, 670, 744, 850, 861, 871, 1013, 1015 to 1018, 1021-1023, 1025-1028, 1350, 1362, 1423, 1459, 1477, 1646, 1940, 1942, 1959, 1973, 1976.

AGREEMENT made between hereinafter called the Employer, and hereinafter called the Manager.

WHEREAS the Manager desires to enter the employ of the Employer, and

WHEREAS the Employer is willing to employ the Manager on the terms and conditions hereinafter set forth,

NOW, THEREFORE, in consideration of the premises, and of the mutual covenants hereinafter contained, it is agreed:

1. The Employer hereby employs the Manager for the period hereinafter set forth as one of its Managers, buyers and salesmen, and for such other and further work and duties as the Manager may be instructed to do and perform by the Employer.

2. The Manager agrees to accept said employment, and to devote his entire time and attention exclusively to the business of the Employer. It is agreed that the Employer shall have the right at any time to change or modify the work and duties to be done and performed by the Manager.

3. The period of employment under this agreement shall begin on and shall, at the option of the Employer, end on, PROVIDED, HOWEVER, that unless the Employer gives notice to the Manager on or before of its intention to terminate this agreement on, then and in such event, the period of employment shall continue from year to year, unless on or before in any year subsequent to the year ending, either party gives notice to the other of the intention to terminate this agreement; and upon the giving

of such notice by either party to the other, this agreement shall terminate on, in the year in which such notice is given.

4. All notices of the intention of either party to terminate this agreement shall be in writing and sent by registered mail addressed to the parties hereto, as follows:

5. The Employer agrees to pay the Manager as full compensation hereunder, a salary at the rate of \$. per, payable, and in addition thereto, the Employer shall pay to the Manager (. . . .) per cent. of the net profits of the business carried on by the Employer as shown by the annual statement of the Employer, which statement shall be prepared by certified public accountants chosen by the Employer. The books and inventory of the Employer shall be conclusive on the Manager. If the net profits of the Employer, however, shall be more than \$. in any one fiscal year, the share to which the Manager shall be entitled hereunder shall be calculated before Federal and State taxes have been deducted from the net profits. If said net profits, however, shall be less than \$. in any one fiscal year, said share to which the Manager shall be entitled shall be calculated after Federal and State taxes have been deducted from the net profits. It is agreed, however, that in the event of any change or modification in the present Federal Income or Excess Profits Tax Laws, the Employer shall have the right at its option to calculate the share of the net profits to which the Manager shall be entitled either before or after the deduction of Federal and State Income and Excess Profits tax, regardless of the amount of the total net profits made by the Employer.

The amount of the net profits to which the Manager shall be entitled hereunder, shall be credited to him within days after the close of the fiscal year of the Employer, and the Manager agrees to purchase from the Employer such amount up to (. . . .) per cent. of the then outstanding capital stock of the Employer as shall be represented by the difference between such share of the net profits to which the Manager shall be entitled, and such amount as the Manager shall be liable to pay for Federal and State Income taxes on the taxable incomes received by him in the preceding year. If the (. . . .) per cent. of the net profits to which the

Manager shall be entitled hereunder, less such amount as the Manager shall be liable to pay for Federal and State taxes as above set forth, shall amount to more than (. . . .) per cent. of the then outstanding capital stock of the Employer, then and in such event, any excess shall be paid to the Manager in cash.

6. In event of the death of the Manager or upon his ceasing to be in the employ of the Employer for any reason whatever, or in the event of his total disability, the Employer shall have the right within days after the cessation of such employment, or his total disability, or in case of the Manager's death within days after the qualifications of his legal representatives, to purchase any stock of the Employer held by the Manager at the book value thereof as shown by the last preceding annual statement of the Employer, plus (. . . .) per cent. interest from the date of such last preceding annual statement to the date of the purchase of the stock by the Employer. In the event of the Manager's ceasing to be employed by the Employer or of his total disability, notice of the Employer's intention to purchase said stock shall be sent by registered mail to the Manager, addressed to and in the case of the Manager's death, notice shall be sent to the duly qualified representatives of the estate of the Manager within days after the Employer shall have been furnished with the address of such legal representatives. All certificates of stock of the Employer issued to the Manager hereunder shall bear on their face the following:

“This certificate is subject as to transfer to a certain agreement made between and , dated”

7. The Manager agrees that he will not engage in any business other than that of the Employer, or in any way directly or indirectly represent or be connected with any other person, firm or corporation during the period of his employment hereunder.

Contract of Employment of Executive with Provision for Sharing of Profits as Compensation

Williston—Sections 1028, 1030, 1358-1362;

Ballenberg *v.* Wahn, 103 App. Div. 34, 92 N. Y. Supp. 380;

Hathaway *v.* Clendening, 135 App. Div. 407, 119 N. Y. Supp. 984;

AGREEMENT made between hereinafter referred to as the Employer, and hereinafter referred to as the Employee, WITNESSETH:

1. The Employer hereby employs the Employee to assist in the management of its business of and by his personal efforts, his business experience and advice, to assist in the conduct of said business.

2. The Employee accepts said employment and agrees to assist in the management of the Employer's business by his personal efforts.

3. The Employee agrees to devote his entire time and energy exclusively to the business of the Employer and not to engage in any other business.

4. The Employer agrees to pay and the Employee agrees to accept, in full payment for his said services, \$. a week, and % of the net profits of the business payable

5. The Employee shall have the right and privilege to inspect all the books and papers of the Employer.

6. The term of this contract shall be from to

7. The Employee agrees that the Employer shall have the right to terminate this contract if the business conducted by the Employer shall be unprofitable, upon giving to the Employee thirty (30) days, notice in writing of his intention to do so.

Contract of Employment of Executive with Provision for Sharing of Profits as Compensation—Another Form

Heaphy *v.* Eidlitz, 197 App. Div. 455, 189 N. Y. Supp. 431.

AGREEMENT made between hereinafter

after designated as the Employer, and, hereinafter designated as the Manager, WITNESSETH.

1. The Manager hereby agrees that for the term of years from the above date he will well and faithfully serve the Employer as general superintendent and perform such other duties pertaining to their business of as the Employer may direct.

2. During the life of this agreement the Manager will devote his entire time and energy to the furtherance of the interests of the Employer, under his direction, and will not act in an advisory or other capacity for any individual, firm or corporation other than the Employer in matters pertaining to the business of, or in the (describe duties of Manager), without first having obtained the consent of the Employer.

3. In consideration of the faithful performance of the above, the Employer agrees to pay to the Manager the sum of \$. for the year commencing and ending, and for the succeeding (.) years, a compensation equivalent to the sum of \$. each year and in addition thereto (%) per cent of the net profits of the business of the said Employer to be determined as herein-after provided, said yearly sum of \$. to be paid in monthly payments on the first day of every month.

4. The net profits of the business for the period above mentioned shall be determined by deducting from the earnings of the Employer all expenses of any and every nature, and also the salaries to be paid to the said Manager.

5. The earnings of the said Employer in which the said Manager shall share shall be such amounts as shall have been earned and paid during the year preceding for work actually performed on (describe Employer's business) and against or upon which no claim has been made.

6. In case the Manager shall be unable to fulfill his part of this contract, through illness or otherwise, the decision as to whether he is to be remunerated and the amount thereof is to be entirely within the uncontrolled discretion of the Employer.

7. In the event of the death of the Manager during the existence of this agreement, then this agreement shall immediately

terminate, and an accounting of the amount due up to the date of such death shall be made to the Manager's personal representatives in the same manner as if the said date of death were the termination of the yearly period herein provided for.

**Employment Contract—Of General Manager by Corporation
—Provisions for Elimination of Manager from Control,
Salary to Continue—Stock Payments in Escrow**

AGREEMENT dated.....between.....
(hereinafter called the "Employer") and....., of
..... (hereinafter called "Employee").

The parties agree:

1. The Employer agrees to employ the Employee to perform the duties and render the services hereinafter provided, and the Employee agrees faithfully and diligently to perform said duties and render said services, for the period commencing at the date hereof and ending three years from the date hereof (hereinafter called the "employment period").

2. The duties to be performed and the services to be rendered by the Employee under this agreement, are as follows:

(a) From the date hereof until the mailing to the Employee of a notice as hereinafter in subdivision b of this paragraph 2 provided, the Employee shall be the General Manager of, and shall supervise, the production, manufacture and distribution of all.....produced, manufactured or distributed by the Employer, subject, however, to the control of the Board of Directors, Executive Committee and general officers of the Employer.

(b) If at any time the Board of Directors of the Employer shall determine that it is dissatisfied with the services of the Employee as General Manager and the Employer shall mail to the Employee notice in writing of such determination, addressed to him at....., then upon the expiration of five (5) days from the mailing of such notice, all power and authority, and all duties, of the Employee as General Manager shall, without any further action, cease and determine, and thereafter the duties to be performed and the services to be rendered by the Employee shall be to give to the Employer from time to time during the employment period advice in

connection with such matters as the Triangle Company may request.

3. The Employee agrees that during the employment period he will devote his entire time and attention and his best efforts to the performance of said duties and the rendering of said services, and that during the employment period he will not directly or indirectly engage in the production or manufacture or distribution of of any kind or description, or in any way carry on or be connected with (either through stock ownership or otherwise) any business either for his own benefit or for or with any other person, firm or corporation whatsoever.

4. In full payment for all services of the Employee hereunder, the Employer agrees:

(a) Within thirty days after the execution of this agreement to issue and to deposit with or some other Bank or Trust Company in the City of satisfactory to the Employee (hereinafter called the Depositary), to be held by the Depositary in escrow and to be delivered by the Depositary to the Employee upon the terms and conditions following, certificates for \$. par value, of the capital stock of the Employer. All dividends which may be paid upon said stock while it shall be so held in escrow shall belong and be paid to the Employee. There shall be delivered to the Employee on each first day of and each first day of during the employment period, commencing however, out of said stock and as his absolute property, certificates for \$. par value thereof. In the event of the Employee's death or incapacity by reason of illness to render services hereunder, delivery of stock shall nevertheless be made to his representative or to him on the dates such deliveries would otherwise have been made. Said stock shall be issued in the name of the Employee, and the Employee agrees to endorse the certificates therefor in blank in form sufficient for transfer before the deposit thereof as herein provided.

(b) To pay to the Employee the sum of \$. per week during the first year of the employment period and \$. per week thereafter, payable in each case at the

end of each week so long as the Employee shall continue to render services and perform duties hereunder during the employment period.

5. The Employee agrees to accept said stock and the payment provided for in Paragraph 4 upon the conditions hereinbefore provided in full payment for the performance of all duties and the rendering of all services to be performed or rendered hereunder.

IN WITNESS WHEREOF, The Employer has caused this agreement to be signed by its proper officers hereunto duly authorized under its corporate seal, and the Employee has hereunto set his hand and seal as of the day and year first above written.

Employment of General Manager by Corporation

AGREEMENT made this.....day of.....between.....
, a corporation of.....
 hereinafter referred to as the "Employer," and.....
 of....., hereinafter referred to as
 the "Employee":

WITNESSETH:

1. The Employer hereby employs the Employee to serve as assistant to the President and as assistant general manager of its business, under the direction of the Executive Committee, Board of Directors and the Executive officers of the company, and the Employer agrees to pay the Employee the salary and percentage hereinafter specified.

2. The Employee agrees to serve the Employer in the capacities above specified for the compensation hereinafter specified, and under the direction above specified, and to devote his entire time and energy exclusively to the Employee's business.

3. The compensation which the Employer agrees to pay the Employee for which the Employee agrees to serve the Employer as aforesaid, is the sum of \$.....a week, payable at the end of each week during the term hereof, and in addition,per cent of all sums paid out by the Employer as dividends upon either its preferred or common stock.

4. The term of this agreement of employment shall be three

years from the date hereof, but the Employer shall have the privilege of canceling this agreement, and the Employee's employment, on..... or at the end of any quarter thereafter by notifying the Employee, and at the same time paying him an amount equal to his compensation under this agreement during the preceding six months.

Agreement for Employment of Manager of One of Chain of Retail Stores—Cash Deposit as Security—Term of Employment as Long as Employment Satisfactory

AGREEMENT made this.....day of..... between....., hereinafter described as the Employer and....., hereinafter described as the Manager,

WITNESSETH:

WHEREAS, the Employer operates a series of retail stores for the sale of....., and

WHEREAS, the Employer desires to employ the Manager as the manager of one of its stores, and the Manager is desirous of entering upon said employment,

Now, THEREFORE, it is agreed between the parties, as follows:

1. The Employer agrees to employ the Manager as Manager of the store at.....or at any other store under the general management of....., its successors and assigns, so long as the services of the Manager are satisfactory to the Employer, and the Manager hereby accepts said employment under the terms herein specified, at a salary of \$..... per week.

2. The Manager agrees to be personally responsible for all merchandise and money that may be charged to him in any of such stores of which he shall be Manager and for all moneys that are received by him or any of his subordinates.

3. The Manager agrees to and does hereby deposit with the Employer \$ as security for the faithful performance by him of all the terms of employment hereby undertaken by him and also as security for the complete and proper accounting by him for all the property or money obtained by

him or his subordinates from the Employer or in the course of business on the Employer's behalf. The Manager agrees to be personally responsible for all said merchandise and money that may be charged to him in any of the stores of which he shall be Manager, and all moneys that are received by him or any of his subordinates.

4. Should shortages occur while the Manager is manager of any particular store or stores, such shortages may be deducted by the Employer for the time being from the \$..... cash security above referred to as soon as any shortage is discovered, and the Manager agrees to pay any amount in excess of \$....., the amount of said security, to the Employer, upon demand.

5. It is agreed that the cash security furnished by the Manager shall always amount to \$....., or over, and should any amount be deducted on account of shortages, the Manager agrees to provide a sufficient amount to restore the amount of such security to \$.....

6. The Employer agrees to pay the Manager at the rate of \$.....interest per annum on the amount of said cash security, during the time it is in the Employer's possession.

7. In the event that the Employer should dispose of his business or should permit other parties to become interested therein in any form, then it is agreed that the security held hereunder may be transferred and held for the benefit of such succeeding employers or other interested parties and that this agreement shall inure to their benefit.

8. The Manager hereby admits that the merchandise shown on the annexed statement was in the store No..... in.....at the time of the date of said statement, and that the values thereof are correctly there stated, and that all the figures and computations on said account are correct.

9. The Manager agrees to indemnify and save harmless the Employer, its successors and assigns, from any expense or damage that may be caused to them, or either of them, by any claim made against them or either of them, based on any misconduct of the Manager or any alleged conduct or misconduct on his part.

EMPLOYMENT OF ACTORS

Contract—Actor and Manager.

Williston, Sections 850n., 1015, 1450.

Broughton *v.* Kalich, 185 N. Y. Supp. 318.

AGREEMENT made between..... (hereinafter called Manager) and..... (hereinafter called Actor):

1. The Manager engages the Actor to render services in, as, upon the terms herein set forth, and the actor hereby accepts such engagement on the following terms: (Here state the name of the part and of the play in which the actor is to appear; also, if he is to be required to understudy).

OPENING DATE.

2. The date of the first public performance shall be aboutor not later than fourteen days thereafter.

Employment hereunder shall begin on the date of the beginning of rehearsals, and shall continue until terminated by such notice as is herein provided.

COMPENSATION

3. The Manager agrees, as compensation for services hereunder, to pay the Actor \$.every week from the date of the first public performance of the play.

4. The Actor, if required, shall give four weeks' rehearsal without pay; if further rehearsals are required, then for each additional week, or part thereof, the Manager shall pay the Actor, on Saturday of that week, at the rate of one-half of the salary mentioned in paragraph 3. Rehearsals shall be considered to be continuous from the date of the first rehearsal to the date of the first public performance of the play as provided in paragraph 2.

(If the above play is a musical play or a spectacular production, then, wherever the word "four" appears in this paragraph the word "six" shall be substituted.)

5. This contract may, during rehearsals, be terminated, as follows:

NOTICE OF TER-
MINATION DUR-
ING REHEARSALS

a. At any time during the first ten days' rehearsals of the company, by either party, by giving written notice, if this contract be signed and entered into within two months of the date mentioned in paragraph 2; or

b. Any time after the first ten days' rehearsals, by the Manager, by paying the Actor a sum equal to two weeks' salary; or

c. By the Manager giving written notice and paying to the Actor two weeks' salary, unless the Manager shall have previously notified the Actor that the play will not be produced or that the Actor will not be called for rehearsal: Provided, further, that the Actor has secured another engagement at a salary not less than herein provided, payments under which are to begin not later than the date of the first public performance herein provided. In these events, the Manager shall not pay said sum equal to two weeks' salary, nor shall he do so if, under similar circumstances, the Actor secures an engagement at a lesser salary to be paid prior to the date mentioned in paragraph 2; in that event the Manager shall pay the difference between the sum equal to two weeks' salary and the sum which the Actor would receive for two weeks' work.

INDIVIDUAL TER-
MINATION.

6. Either party may terminate this contract at any time on or after the date of the first public performance of the play by giving the other party two weeks' written notice.

d. The Actor may cancel the contract by giving written notice and paying to the Manager a sum equal to two weeks' salary.

TERMINATION BY
CLOSING OF PLAY
OR COMPANY

7. a. If the play runs four weeks or less, the Manager may close the play and company without notice, and terminate the right of the Actor to further compensation: Provided he has paid the

Actor for all services rendered from the date of first public performance, and in no event not less.

b. If the play shall run more than four weeks, the Manager shall give one week's notice of the closing of the season of the play and company, and thereby terminate the right of the Actor to compensation except for services performed to the date of closing.

8. If the Manager is prevented from giving rehearsals because of fire, accident, riot, illness of star, or prominent member of the cast, act of God, public enemy, or other cause which could not reasonably be anticipated or prevented, then the time so lost shall not be counted as part of the four weeks' rehearsal period herein provided. When said time so lost shall exceed two weeks, the Actor shall be free if he so elects.

Producing Managers' Association and Actors' Equity Association. Standard Form of Actor's Contract

Williston, Sections 850, 1015, 1450.

AGREEMENT made thisday of
19..., between.....(hereinafter called "Manager ") and.....(hereinafter called "Actor ").

AGREEMENT OF EMPLOYMENT.—1. The Actor and the Manager agree that this contract is entered into independently of any other contract between any Equity member and any producer and of any other contract or contracts, affiliation or understanding of any character whatever other than the agreement dated September 6, 1919, between Producing Managers' Association and Actors' Equity Association.

The Manager engages the Actor to render services in *.....

*(Here state the name of the part and of the play in which the Actor is to appear; also, if he is to be required to understudy.)

.....upon the terms herein forth, and the Actor hereby accepts such engagement on the following terms:

OPENING DATE.—2. The date of the first public perform-

ance shall be the day of, 19... , or not later than fourteen days thereafter.

Employment hereunder shall begin on the date of the beginning of rehearsals and shall continue until terminated by such notice as is herein provided.

COMPENSATION.—3. The Manager agrees, as compensation for services hereunder, to pay the Actor the sum of Dollars (\$.) every week from the date of the first public performance of the play.

REHEARSALS.—4. (a) The Actor, if required, shall give four weeks' rehearsal without pay; if further rehearsals are required, then, for each additional week or part thereof, the Manager shall pay the Actor full salary therefor.

(b) Rehearsals shall be considered to be continuous from the date of the first rehearsal to the date of the first public performance of the play as provided in paragraph two.

(c) If the above play is a musical play, or a spectacular production, then, wherever the word "Four" appears with reference to rehearsals in this contract, the word "Five" shall be substituted.

NOTICE OF TERMINATION DURING REHEARSALS.—5. This contract may, during rehearsals, be terminated as follows:

(a) At any time during the first ten days' rehearsals of the Actor by either party by giving written notice, if this contract be signed and entered into within two months of the date mentioned in paragraph two, except in case the Actor be re-engaged for a part which he has previously played; or

(b) Any time after the first ten days' rehearsals of the Actor, by the Manager, by paying the Actor a sum equal to two weeks' salary.

(c) The Actor may cancel the contract by giving written notice and paying to the Manager a sum equal to two weeks' salary.

(d) If a play be rehearsed less than ten days and abandoned by the Manager, the Manager shall pay the Actor one week's salary. •

NOTICE OF TERMINATION BEFORE REHEARSAL.—This contract may before the beginning of rehearsals be terminated as follows:

If this contract be signed and entered into prior to two months of the date mentioned in paragraph two:

(e) By the Manager giving written notice and paying to the Actor two weeks' salary, unless the Manager shall have previously notified the Actor that the play will not be produced or that the Actor will not be called for rehearsal; provided further, that the Actor has secured another engagement at a salary not less than herein provided, payments under which are to begin not later than the date of the first public performance herein provided. In these events, the Manager shall not pay said sum equal to two weeks' salary, nor shall he do so if under similar circumstances the Actor secures an engagement at a lesser salary to be paid prior to the date mentioned in paragraph two; in that event the Manager shall pay the difference between the sum equal to two weeks' salary and the sum which the Actor would receive for two weeks' work.

INDIVIDUAL TERMINATION.—6. Either party may terminate this contract at any time on or after the date of the first public performance of the play by giving the other party two weeks' written notice.

TERMINATION BY CLOSING OF PLAY AND SEASON.—7. (a) If the play runs four weeks or less, the Manager may close the play and company without notice, and terminate the right of the Actor to further compensation, provided he has paid the Actor for all services rendered from the date of first public performance, and in no event less than two weeks' salary.

(b) If the play shall run more than four weeks, the Manager shall give one week's notice of the closing of the season of the play and company, and thereby terminate the right of the Actor to compensation except for services performed to the date of closing.

LOST REHEARSALS.—8. If the Manager is prevented from giving rehearsals because of fire, accident, riot, strikes, illness of star, or prominent member of the cast, Act of God, public enemy or any other cause which could not reasonably be anticipated or prevented, then, the time so lost shall not be counted as part of the four weeks' rehearsal period herein provided. When said time so lost shall exceed two weeks, the Actor shall be free if he so elects.

CLOTHES.—9. (a) The Actor shall furnish and pay for such clothes as are customarily worn by civilians of the present day in this country, together with wigs, boots, and shoes necessarily appurtenant thereto. All other clothes, wigs, shoes, costumes and appurtenances and all "properties" to be furnished by the Manager.

(b) If the Actor be a woman, then the following clause supersedes (a):

In both dramatic and musical companies all artists' gowns, hats and all "properties" shall be furnished by the Manager. Footwear and wigs for modern plays to be furnished by the Actress.

(c) All costumes, wigs, shoes and stockings shall be furnished the chorus by the Manager.

(d) It is understood that in every case where the Manager furnished costumes and appurtenances under this paragraph of the agreement, if notice of cancellation of this contract be given by such Actor, in that event he or she shall reimburse the Manager for the necessary and reasonable expense to which he may be put in altering or rearranging such costumes for his or her successor.

NUMBER OF PERFORMANCES.—10. (a) Eight performances shall constitute a week's work. A sum equal to one-eighth of the weekly salary shall be paid for each performance over eight in each week.

(b) Salaries shall be paid on Saturday night.

TRANSPORTATION.—11. The Manager hereby agrees to pay for transportation of the Actor when required to travel, including transportation from New York City to the opening point, and back to New York City from the closing point. The Manager, also, agrees to pay the cost of all transportation of the Actor's personal baggage up to two hundred pounds weight.

12. (a) If this contract is cancelled by the Manager, he agrees to pay the railroad fare of the Actor back to New York City.

(b) If this contract is cancelled by the Actor, he agrees to pay his own railroad fare back to New York City, and to reimburse the Manager for any railroad fare the Manager may have to pay for the Actor's successor up to an amount

not exceeding railroad fare from New York City to the point where said successor joins the Company.

(c) If the Company is organized and its members are engaged outside of New York City, the name of such place is, unless it is otherwise stated, herein agreed to be substituted for New York in paragraphs eleven and twelve.

LOST PERFORMANCES.—13. The Actor shall travel with the Company by such routes as the Manager may direct, and the Actor shall not demand compensation for any performance lost through unavoidable delay in travel which prevents such performance by the Company.

14. It is further agreed if the Company cannot perform because of fire, accident, strikes, riot, Act of God, the public enemy, or for any other cause which could not be reasonably anticipated or prevented, or if the Actor cannot perform or rehearse on account of illness or any other valid reason, then the Actor shall not be entitled to any salary for the time during which said services shall not for such reason or reasons be rendered. If this illness of the Actor should continue for a period of ten days or more, the Manager may terminate the contract.

LAY-OFF.—15. Beginning with the season 1920-1921, full salaries will be paid the week before Christmas and Holy Week, but during the season, 1919-1920, the Manager has the right to lay off the Company without salary for the week before Christmas and the week preceding Easter Sunday, or both weeks, if desired. In the event of such lay-off, the Manager shall not be entitled to the services of the Company unless rehearsals be made necessary by the sudden illness of the star, or of some prominent member of the Company or of change in the cast.

DUTIES OF THE ACTOR.—16. The Actor agrees to be prompt at rehearsals, to pay strict regard to make-up and dress, to perform his services in a competent and painstaking manner, to abide by all reasonable rules and regulations, and to render services exclusively to the Manager from the date of beginning of rehearsals, and shall not render services to any other person, firm or corporation, without the consent of the Manager.

NOTICES.—17. All communications which refer to the

Company in general shall be posted upon the call-board. Notice to the Manager must be given to him personally or to his representatives.

ARBITRATION.—18. In event any dispute shall arise between the parties as to any matter or thing covered by this contract, then said dispute or claim shall be arbitrated. The Manager shall choose one arbitrator and the Actors' Equity Association the second. If within three days these arbitrators shall not be able to agree, then within that time they shall choose a third, who shall not in any way be connected with the Theatrical Profession.

If they fail to do so,....., or his appointee, shall be the third. The arbitrator shall hear the parties and within ten days decide the dispute or claim.

The decision of a majority of said arbitrators shall be the decision of all, and shall be binding; said decision shall be final.

The arbitrators shall determine by whom and in what proportion the cost of the arbitration shall be paid. The parties hereby appoint said Board its agents, with full power to finally settle said dispute or claim, and agree that its decision shall constitute an agreement between them, having the same binding force as if agreed to by the parties themselves.

Should suit be brought before the selection of arbitrators, the party sued may at any time after suit and before trial give notice to arbitrate, and then in such case arbitration must be chosen as stated hereinabove.

The parties hereto shall pay the arbitrators respectively selected by them, and they shall bear equally the expense of the arbitration and the umpire.

.....MANAGER
.....ACTOR

Contract between Producer and Actor

Williston—Section 413, 850n., 1015, 1450, 1940, 1980;

Morrison *v.* Hurtig & Seamon, 198 352, 91 N. E. 842.

AGREEMENT made.....between....
.....hereinafter described as the Producer
and.....hereinafter described as the
Actor, WITNESSETH:

That in consideration of the covenants and agreements hereinafter contained, the parties agree as follows:

1. The Producer hereby employs the Actor to perform in any parts which he may be cast for, in any musical comedy or farce to be produced within the United States or elsewhere, for the term of.....theatrical seasons, commencing on or about.....

2. The Actor agrees to enter into the employment of the Producer, and covenants that he will attend and take part in all rehearsals called by the Producer, that he will pay strict regard to make-up in the dressing of characters, and will attend and take part in all performances given by the Producer during the term of this agreement,.....each evening of the week, whenever called upon so to perform, and on such afternoons as may be designated by the Producer for matinee performances, including the afternoons of all holidays.

3. The Actor further agrees to abide by and conform to all the rules and regulations of the Producer now made or hereafter to be made and to pay all and every forfeits which may be fixed by the Producer for any breach of such rules.

4. The Actor agrees that inasmuch as his performances are special, unique and of an extraordinary character, and since it would be impossible easily to replace him, that he will not appear or perform at any other theatre or place of amusement, or for any other person or persons, except the Producer, anywhere during the term or period fixed by this agreement or any extension thereof, without the consent in writing of the Producer had and obtained, and that, upon a breach or violation of this condition or covenant, the Producer shall be entitled as a matter of right, and without notice, to an injunction to be issued by any court of competent jurisdiction, to restrain the Actor from a violation thereof, or from appearing or performing for any other person, firm or corporation except the Producer.

5. The Actor agrees to furnish at his own expense, all necessary costumes, wigs, shoes, boots, tights, stockings and gloves, in and about his performances.

6. The Actor agrees that he will not be or become interested in any theatrical business, or venture, without the consent

in writing of the Producer during the continuance of this contract.

7. The Producer agrees to pay to the Actor..... dollars each and every week, during which performances shall be actually had; and for the season of....., the Producer agrees to pay to the Actor jointly the sum of..... dollars each and every week, during which performances shall be actually had. No salary, however, shall be paid for any rehearsals for performances which shall be prevented by accident or other unavoidable or necessary lay-offs, or for performances in which the Actor shall not participate.

8. It is agreed that the Producer will pay the fares of the Actor on to the opening stand and back to New York City.

9. It is also agreed that.....is to have the star dressing room and alone.

10. It is agreed that in the event of the Actor committing a breach of this agreement or becoming intoxicated or committing a breach of any of the rules and regulations of the Producer, the Producer shall be entitled forthwith to terminate this agreement.

**CONTRACTS OF EMPLOYMENT RESPECTING REAL
PROPERTY**

Contract Granting Exclusive Agency to Rent Real Estate.

Williston—Sections 60, 450, 1012, 1406, 1446, 1645;
Moses *v.* Bierling, 31 N. Y. 462;
Shultz *v.* Griffin, 5 Misc. 499, 26 N. Y. Supp. 713;
Levy *v.* Rothe, 17 Misc. 402, 39 N. Y. Supp. 1057;
Van Patten *v.* Taber, 71 Misc. 610, 130 N. Y. Supp. 1055;
Harris *v.* Morton, 101 Misc. 398, 167 N. Y. Supp. 80.

AGREEMENT made between hereinafter designated as the Owner, and hereinafter designated as the Agent, WITNESSETH:

1. The Owner hereby employs and authorizes the said agent to take sole, entire, and exclusive charge of the renting of the building known as and several lofts and parts thereof, and also to renew various leases now existing for parts of said premises, for the period of from the date of this agreement.

2. The Owner agrees to pay the Agent compensation for the services to be rendered by said Agent at the following rates: (A) For all new leases of space in the said premises, at the rates set forth in the regulations as to real estate commissions adopted on the, by the Real Estate Board of New York; (B) For all renewals of leases of space in the said premises, at the rate of one-half the usual commissions established as aforesaid by the Real Estate Board of New York.

3. It is agreed that in all cases where leases of space in the said premises are effected by any other broker who will be recommended by the owner in conjunction with the said Agent, the said Agent is to pay such other broker his commission, and that in such event the Owner will pay to the said Agent, in addition to the compensation stipulated in the foregoing clause 2 of this agreement, a further amount equivalent to of said stipulated compensation.

4. It is agreed that during the term of this agreement all brokers consulting or applying to the said Owner in respect to the leasing of space in the said premises shall be instructed to deal with and through the said Agent; that renewals of existing or future leases of space in the said premises during the term of this agreement shall be made solely by and through the said Agent; that during the term of this agreement the said Owner will permit the display upon the said building of a sign of the said Agent announcing that said premises or any part thereof are to be let; and that during the term of this agreement the said Owner will not allow the erection or display upon said building or any part thereof of any sign or device or announcement of similar effect of any person, firm or corporation other than the said Agent.

5. The said Agent hereby accepts said employment and agrees to use its best skill and efforts to procure suitable tenants for said building and the several parts thereof and to accept and receive the commissions hereinbefore set forth in full compensation for all services to be performed by it under this agreement.

Agreement between Owner of Real Estate and Agent for Care of Property

Williston—Sections 60, w and 450.

AGREEMENT made between hereinafter referred to as the Owner) and (hereinafter referred to as the Agent).

The parties agree as follows:

1. The Owner hereby employs the agent as its general agent to take entire charge of the premises for the term of commencing and ending unless sooner terminated as hereinafter provided.

2. The Owner hereby grants to the agent authority to ask, demand, collect and receive all rents, and to give receipts therefor; to order, direct and superintend all repairs and decorations and to make disbursements for same; to hire employes

and to pay the salary or wages of the same; to make all purchases and in general to do and perform all acts and things incident to such management and to make all disbursements in connection therewith.

3. The Agent agrees to render to the Owner a monthly statement of all moneys received and disbursed in connection with the management, and to pay to the Owner, or his order, the balance thereof remaining after deducting all charges and expenses in connection therewith, and the Owner agrees to reimburse the agent for any deficiency.

4. The Owner agrees that the agent shall retain for its services in connection with the management of said property per centum (. . . %) of the gross receipts during the term of its contract.

5. In the event of the sale or exchange of the property, the Owner may cancel this contract at any time by giving the Agent thirty (30) days, prior written notice, and the Owner agrees to pay the Agent (\$) Dollars, upon the cancellation of said agreement.

CONTRACTS FOR DRAMATIC PRODUCTIONS

Standard Form of Minimum Dramatic Contract for Production of Play, Adopted by the Authors' League of America, Inc., and the Producing Managers' Association ¹

Williston—Sections 850, 1015, 1450;

THIS AGREEMENT made and entered into this.....day of....., 19.., by and between....., hereinafter referred to as the Manager, and....., hereinafter referred to as the Author WITNESSETH:

WHEREAS, the Author is the sole author and owner of a certain original play or dramatic composition provisionally entitled.....and

WHEREAS, the Manager desires to obtain the exclusive right to produce and perform the said play in the United States of America and the Dominion of Canada, and

WHEREAS, the said Author is willing to grant to the said Manager the exclusive rights to produce the said play in the said territory under certain terms and conditions;

NOW THEREFORE, in consideration of the premises and the mutual promises and covenants herein contained, it is agreed by the parties as follows:

1. The Author hereby leases to the Manager the sole and exclusive right of presentation on the regular speaking stage in the United States of America and Dominion of Canada, of the play now entitled..... on the covenants and conditions hereinafter mentioned.

2. The Manager agrees upon the signing of this contract to pay to the Author....., receipt of which sum is hereby acknowledged, as an advance upon royalties accruing as provided in Section 3 hereof. This sum shall be the absolute property of the Author and shall not be returnable in any event.

3. The Manager agrees to pay to the Author, or his duly

¹ Formal phrases which have no bearing on the content of the form have been omitted.

authorized representative, not later than ten days following each and every calendar week during which a performance of the said play shall have been given, a sum, equal to of the first thousand dollars gross weekly box office receipts from all sources whatsoever on account of said play and of the next thousand dollars gross weekly box office receipts as aforesaid and of all gross weekly box office weekly box office receipts as aforesaid in excess of thousand dollars, and to render at the same time authenticated and accurate weekly statements of the gross box office receipts from each and every performance, exhibition, representation, and production of the said play by each and all companies in the United States of America and Dominion of Canada during such calendar week, said statement to be signed by the Treasurer or Treasurers of the theatre in which any and all such representations, exhibitions, performances or productions are given and countersigned by the Manager or his duly authorized representative.

The term "gross weekly box office receipts from all sources whatsoever" as used in this agreement shall be construed to include any sums over and above regular box office prices of tickets received by the Manager from speculators, ticket agencies or other persons and any other additional sums whatsoever, received by the Manager on account of said play.

It is mutually agreed by the parties hereto that if the said play shall be performed by more than one company each company shall be considered as a separate undertaking and the royalties accruing from each company shall be computed and paid separately according to the provisions set forth.

4. If the said play is ever used in repertoire or broken weeks, as an original or first class production (as distinguished from stock or stock repertoire), it is agreed that the royalties as aforesaid in either or in both of these events shall be reckoned in groups of eight performances, such eight performances to constitute a week for the purpose of paragraph 3 of this agreement.

5. The Manager agrees to produce said play for a consecutive run in an evening bill in a first class manner and with a first class cast in a first class theatre, in a first class city in the

United States or Canada within six months from the date of this agreement, and if the said play is not produced and presented by the said Manager within the said time, the said Manager agrees that all rights in and to the said play and all rights granted by this contract shall forthwith cease and determine and shall revert to the said Author, unless the said Manager, on or before the expiration of the said time shall have paid to the Author a further sum equal to the first payment as provided for in paragraph 2 herein which sum shall be regarded as additional advance royalty. If such payment is made, then and in that event, the Manager shall have, for such payment, an extension of the date of the first production of the said play for a further period of six(6) months. If the said play is then not produced, the Manager agrees forthwith to return to the said Author, all manuscripts and parts of the said play in his possession or under his control, and shall lose all rights in and to the said play and all rights granted to him by this contract shall revert to the Author forthwith.

6. The Manager agrees to announce the name of the Author as sole Author of said play in all advertising matter in which the name of the Manager appears.

7. The Manager agrees to produce the play without any additions, omissions or any alterations whatsoever, except such as may be specifically authorized by the Author in writing, and with a cast and production approved by the Author, such approval not to be unreasonably withheld. The Author shall be notified of rehearsals and shall have the right to attend any and all rehearsals of said play, and it is further agreed that this covenant is of the essence of this agreement. In the event of any dispute arising from this clause the matter shall be referred to the arbitration committee as provided for in Paragraph 21 of this agreement.

8. The Manager further agrees to pay such hotel and travelling expenses as the Author has incurred in taking any trips outside of New York City to attend any preliminary rehearsals prior to the opening performance of the said play, and to the opening performance of said play, and at any other time when the Manager shall request the presence of the Author.

9. It is mutually agreed between the parties hereto that

provided the Manager has presented the said play for three (3) consecutive weeks in New York City or Chicago or seventy-five (75) times under his own direction within one year after the first performance of the said play; or in the event the Manager has produced said play forty (40) or more of the aforesaid seventy-five (75) times and pays to the author the pro rata average royalty for the remaining performances not given, and providing that he has complied with all the terms and conditions of this contract, then and in that event, and in that event only, the net royalty derived from the performances of the said play in stock theatres and by stock companies in the territory covered by this agreement shall be divided one-half ($\frac{1}{2}$) to the said Manager and one-half ($\frac{1}{2}$) to the said Author. It is further understood and agreed that the said play shall be released for production by Stock Companies and in Stock Theatres within a reasonable time after the play has ceased to be presented as a road attraction as the term is understood theatrically. For the purposes of this agreement the road attraction shall be considered to have ceased if the play has not been produced for four (4) consecutive weeks in any one theatrical year dating from September first of one year to June first of the following year. It is further understood and agreed between the Manager and the Author that the Agent who is authorized to make stock leasings of the said play shall be mutually agreed upon by the Manager and the Author and shall pay the Author's share of the royalty earned from stock performances of the said play direct to the Author.

10. It is mutually agreed between the parties hereto that provided the Manager complies with all the terms and conditions of this contract and has produced the said play three (3) consecutive weeks in New York City or Chicago or seventy-five (75) times after the first performance of the said play; or in the event the Manager has produced said play (40) forty or more of the aforesaid seventy-five (75) times and pays to the Author the pro rata average royalty for the remaining performances not given, then when said play or a novelization of said play is sold or leased for the purpose of reproduction by means of motion picture films, the net profits derived from the sales or leasings of all the motion picture rights in said play shall be divided one-half ($\frac{1}{2}$) to the said Manager and one-half ($\frac{1}{2}$) to the said Author. It is

further understood and agreed that if the Manager acquires an interest in the proceeds derived from the sale of the motion picture rights of the said play as aforesaid, then when the said play is sold for reproduction by means of motion picture films it must be with the mutual consent of the Manager and the Author who must be signatories to the contract together with the Purchaser of these rights. It is further agreed that should the Manager fail to submit to the Author a satisfactory offer for the motion picture rights to said play within twelve (12) months after the first stock production of the said play, then the Author shall have the right to submit to the Manager an offer for the said motion picture rights which offer the Manager shall accept or in lieu thereof pay to the Author a sum equal to one-half ($\frac{1}{2}$) of the offer submitted by the Author, the Manager by such payment acquiring for himself all of the said motion picture rights to the said play so negotiated.

11. It is understood and agreed that if during any calendar year commencing after the season in which the play has ceased as a road attraction, as in Paragraph 9 herein provided, said play is not presented by said Manager or in stock as much as seventy-five (75) times, then the stock and stage performing rights shall revert to the Author.

12. It is mutually agreed by the parties hereto that the exclusive rights acquired by the Manager under this agreement are the English speaking rights to said play, but the Manager and the Author shall divide equally the net proceeds from the sale of the Yiddish or any other foreign language rights to the said play in the territory covered by this contract, it being understood and agreed by the Manager and Author that the sale of the Yiddish or any other foreign language rights to said play in the territory covered by this contract must be with the mutual consent of the Manager and the Author.

13. It is mutually agreed between the parties hereto that provided the Manager shall have produced the said play in accordance with the terms of this contract as set forth in Paragraph 5 hereof, and within the time herein stated, and in the manner herein provided for, in the United States of America or in the Dominion of Canada, and shall have faithfully performed all the other terms and conditions of this agreement, he

shall have for the period of ninety (90) days next succeeding the first production of the play as herein provided, the option of acquiring a lease of the sole and exclusive right of presentation on the regular speaking stage in England, Ireland, Scotland and Wales, upon terms in all respects precisely identical to the terms of this agreement with the exception however of Paragraph 8 hereof and as to the date of production, that he shall produce said play in said territory, not later than one (1) year after the exercise of the option on said rights unless the second option is obtained with the extension as therein provided. If the Manager shall fail to make such presentation as in this Clause provided for and within the time herein provided for, the Author shall have the right to dispose of the said play in the territory referred to in this paragraph and for his sole benefit.

14. It is further understood and agreed that if the Manager shall have produced said play in accordance with the terms of the contract as set forth in paragraph 5 hereof and in the time therein stated that the Manager shall have the right to sell or lease said play for Australia, New Zealand and South Africa subject to the approval of the Author, which approval shall not be unreasonably withheld, the proceeds of said sale or lease to be divided equally between the Manager and the Author.

15. All rights, now existent, or which may hereafter come into existence except those hereinbefore specifically granted or leased to the Manager are hereby reserved to the Author.

16. It is expressly understood and agreed that the copyright covering the said play is not assigned or released by the Author and that all the Author's right, title and interest in and to such copyright and any assignment thereof, are expressly reserved by him, and that the rights granted to the Manager herein are expressly limited to such rights as are specifically set forth in this agreement. The Author hereby expressly covenants and agrees that he either now has or else will promptly and properly secure copyright in each of the countries granting dramatic copyright covered by this agreement.

17. It is expressly understood and agreed that the rights granted herein are personal, and that neither this contract nor the rights granted herein to the Manager shall be assigned or assignable by him, nor shall the said play be sublet by the

Manager without his first having received the consent in writing of the Author so to do, unless said assignment be made to a company or corporation in which the Manager has a controlling interest, and in that event the Manager shall be personally liable for the fulfillment of the terms and conditions of this contract. Neither this contract nor any rights thereunder shall be subject to judicial sale under any insolvency, bankruptcy or receivership proceedings. In the event of the judicial sale of the Manager's assets under any such proceedings all rights hereunder remaining in the Manager shall revert to the Author.

18. If the Manager should at any time during the existence of this agreement fail to comply with or fulfill any of the terms or conditions thereof, including the condition that said play shall be produced as and when stipulated in Paragraph 5 hereof, time being expressly made of the essence of this agreement, then or in any of these events, this agreement shall become null and void at the option of the Author, said option to be exercised by the Author in writing and by registered mail and thereupon all rights granted by the Author to the Manager shall forthwith terminate and revert to him together with any copies of said play or parts thereof which may be in the possession or custody of the Manager or his staff or agents, together with all additions or alterations in the same all of which shall always definitely belong to the Author, and any payment which may have been made to the Author under this agreement shall remain his absolute property, all, however, without prejudice to any rights which the Author may have as against the Manager.

19. The Author hereby warrants that he is the Author and Proprietor of said play, and has the right to execute this lease. If any action or proceedings alleging infringement are brought against the Manager or the Author or both, the matter shall be submitted to the standing arbitration committees of the Authors' League of America, Inc., and the Producing Managers' Association as provided for in Paragraph 21 of this agreement, the Manager and the Author hereby agreeing to use every effort to induce the party bringing said action to submit the matter in dispute to the aforementioned arbitration committees. If the aforementioned arbitration committees shall fail to

adjust this matter then it is mutually agreed by the Manager and the Author that the conduct and expense of defending the said action shall rest jointly and equally with the Manager and the Author, unless the Author shall be adjudged to have been guilty of plagiarism, in which event no part of the expense shall be paid by the Manager.

20. It is expressly understood and agreed by the Manager and the Author that any change affecting the terms and conditions of this agreement shall not be valid unless explicitly set forth in writing and signed by the parties hereto.

21. In the event that any dispute shall arise between the parties hereto: (1) as to any matter or thing covered by this contract; (2) as to the meaning of the contract or its application to any state of facts which may arise—then said dispute or claims shall be arbitrated by and between the Arbitration Committee, a standing committee of two (2) appointed for that purpose by the Dramatists' Guild of the Authors' League of America, Inc., and an Arbitration Committee of equal number appointed by the Producing Managers' Association. The arbitrators shall hear the parties and decide the dispute or claim. If within three (3) days after such hearings these arbitrators shall not be able to agree then within that time they shall choose a fifth. The decision of a majority of the said arbitrators shall be the decision of all and shall be binding and said decision shall be final.

The arbitrators shall determine by whom and in what proportion the cost of the arbitration shall be paid. The parties hereby appoint said Board as its agent, with full power to finally settle said dispute or claim and agree that its decision shall constitute an agreement between them, having the same binding force as if agreed to by the parties themselves.

22. It is mutually agreed by the Manager and the Author that upon the termination of this agreement for whatsoever cause, the Manager will forthwith return to the Author, all manuscripts and parts of the said play in his possession and under his control, together with all additions to or alterations in the same, all of which shall always definitely belong to the said Author.

23. This agreement is binding upon all the parties hereto,

their and each of their successors, heirs, administrators and assigns.

IN WITNESS WHEREOF, the parties hereto have hereunto set their respective hands and seals and those, if any, which are corporations have caused these presents to be signed by their duly authorized officers and the corporate seal to be affixed hereto on the day and year first above written.

.....

Agreement between Author and Producers for Production of Play

Herne v. Liebler, 73 App. Div. 194, 76 N. Y. Supp. 762.

AGREEMENT made this.....day of....., betweenand....., constituting the firm of....., hereinafter described as the Producers, and....., hereinafter described as the Author, WITNESSETH:

Whereas.....is the author and sole and absolute owner of the manuscript of the play known as “.....” which he is desirous of having produced upon the stage, and

Whereas the Producers are desirous of producing said play in the manner and for the period hereinafter stated, and

Whereas the parties hereto are prepared to enter into an agreement, which shall be limited, however exclusively, to matters in connection with the production, management and exhibition of said play on the terms and conditions hereinafter stated.

Now, therefore, in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree with each other as follows:

1. The author hereby grants to the producers the exclusive right to produce the said play “.....” in the..... and.....(naming countries), for a period of.....years, commencing on the.....day of....., 19.., and ending on the.....day of....., 19.., and agrees that during the said period the said play shall not be published or in any

manner dedicated to the public, but shall remain in manuscript form, and be used only for the stage production by the said Producers; the said play to be absolutely free from royalties except as herein provided.

2. The Producers agree to give the first production of said play as soon after as shall be possible, in conformity with the terms of this contract, and in any event, before, 19 . . ., and agree to produce the said play continuously during the regular theatrical seasons throughout the period of this contract. In the event that the production of said play should result in a loss for any theatrical season, then whenever such loss for any theatrical season shall amount to the sum of dollars (\$) said producers may, by notice to the other party, terminate this agreement.

3. The Producers agree to furnish such sums of money as shall be necessary to start the production of the said play and to furnish all necessary printing and lithographs, and such properties, scenery, costumes and paraphernalia as the Author shall deem necessary for the production of the said play, this amount to be considered as an expense and to be paid before the amount of net profits shall be determined.

4. The selection of actors and actresses for the production of said play shall be subject to the approval of the said, but the salaries shall be paid by the Producers, such amount to be considered as an expense, and to be paid before the amount of net profits shall be determined.

5. The stage production, that is to say, the management of the stage, shall be exclusively under the supervision of the said, who hereby agrees to give the necessary time and attention to said management.

6. The Producers shall manage the front of the house and attend generally to the business management, to wit, what is usually known in the theatrical business as attending to the front of the house, routing of the company, printing, advertising, etc., but performances shall be given only at first class theatres.

7. The Producers further agree that whenever the said author shall, during the period herein referred to, act on the stage in said play, then for each and every week while so acting,

the said Author shall receive the sum of.....dollars (\$.....), which amount shall be considered as an expense, and shall be paid before any profits be determined. Nothing herein contained shall require the said author to act personally upon the stage in said play, but the said author is to receive said sum of.....dollars (\$.....) per week only when personally acting as aforesaid.

8. Whenever the said Author shall be personally acting upon the stage aforesaid, in the said play “.....”, he shall be “starred” and all advertisements, printed notices and announcements thereof shall read as follows:

9. “..... as ‘.....’ in his own play, ‘.....’ under the direction of.....”

10. If mutually deemed advisable, said Producers will supply such additional funds as may be necessary in order to form another theatrical company for the production of said play, such production of said play and the interest of the respective parties hereto, herein to be governed by the terms of this agreement.

11. Upon the expiration of this agreement, or its termination for any cause whatsoever, all rights and privileges in and to the said play “.....,” and the manuscript thereof, hereby granted, shall revert and belong to the said Author.

12. The parties to this agreement shall at all times have access to the books of the said Producers, appertaining to said play, and to the box office of the theatre where said play may be produced.

13. The Producers shall, after deducting all expenses to which they have been put and advances, as herein provided, at the expiration of each month pay to the said..... a sum equal to.....per cent of the net profits resulting from said production or productions.

14. The parties hereto may continue to give their attention to such other matters as they may hereafter be engaged in, but the parties hereto shall give sufficient attention to the production of the said play “.....,” as hereinbefore provided.

15. Nothing herein contained shall be construed to constitute a partnership between the parties hereto, or to impose any liability whatsoever on the part of said.....for any loss

incurred in the production by the parties of the first part of the said play "....."

16. In the event that any disagreement or any question of any kind should arise between the parties hereto as to their respective relations, rights, privileges or duties hereunder, the same shall be settled by arbitration, either by.....arbitrator.....to be mutually agreed upon by the parties hereto, or in case they cannot agree upon.....arbitrator..., the same shall be submitted to.....arbitrator..., of whom the producers shall be entitled to choose....., the author....., and the.....arbitrator...chosen shall choose the third (or fourth, as the case may be), and the decision of any single arbitrator appointed by mutual agreement, or of a majority of the.....arbitrators, reduced to writing, is to be final and conclusive as to all parties hereto.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written.

AUTHOR AND PUBLISHER

Contract between Author and Publisher for Legal Work

Williston, Sections 413, 1940, 1980;

Jones *v.* American Law Book Co., 125 App. Div. 519, 109
N. Y. Supp. 706.

AGREEMENT made between hereinafter described as the Publisher, and hereinafter described as the Author, WITNESSETH:

1. The Publisher hereby employs the Author to render services in writing articles on subjects of law to be published by the Publisher.

2. The term of employment fixed by this agreement is to commence

3. The Publisher covenants and agrees to pay the Author dollars.

4. The Author agrees to write and prepare original articles and treatises or parts of articles and treatises on subjects and topics of the law, said subjects and topics to be assigned to said Author by said Publisher, for the period of years, commencing on and ending on

5. The Author agrees to work faithfully and diligently hours each business day of each week, to-wit, from o'clock A. M. until o'clock P. M., exclusive of hour during said time each day. It is agreed that the term "business day" as used in this contract, shall not include Sundays or legal holidays or a week's vacation, at a time during the term of this contract, as shall be most convenient to both parties; but such vacation shall not occur prior to months service of the Author.

6. The Author agrees to write and prepare said articles or parts of articles in such manner and of such a quality as to come up to the proper standard for publication in the (name of book). The Publisher reserves the right to make editorial changes in the manuscript of any articles or parts of

articles written and prepared by said Author under the terms of this contract, and that this right shall extend to the rejection of any portion of the manuscript which in the opinion of the Publisher does not come up to the proper standard for publication, or cannot be used therefor.

7. The Author agrees to warrant the Publisher against any and all liability for infringement of the copyright of published works, especially the and ; and in the writing and preparation, or during the writing and preparation, of any article, or parts of articles, so assigned to the Author, as hereinabove mentioned, not to use, consult, or look into for any purposes, the said (Names of reference books.)

8. The Author agrees to reserve no right to republish any articles, or parts of articles, so written and prepared by the Author, and that the Publisher shall become the sole owner of the copyright of said articles, and parts of articles so written and prepared.

Agreement for Publication of Book, Author Reserving Copyright and Receiving Royalties.

Another form.

Williston, Sections 413, 1940 and 1980.

AGREEMENT made between hereinafter called the Author, and hereinafter called the Publisher, WITNESSETH:

1. The Author shall write or complete the writing of a book of not less than words, being a (description of work), to be entitled , and shall deliver the completed manuscript thereof to the Publisher on or before the day of

2. During the subsistence of this agreement the Publisher shall have the sole right of publishing the book throughout the United States. The Author shall not during such period publish or cause to be published in any part of the United States any copy, abridgement (or, dramatized version) of the work without the consent in writing of the Publisher (but the Author shall be at liberty to dramatize the work and exercise or assign the dramatic performing rights therein).

3. During the existence of this agreement neither the Publisher nor the Author shall publish or cause to be published or edit, or assist in editing or contribute matter to, any work or treatise on the subject of.....

4. The Publisher shall print and publish the book at his own expense and risk. He shall publish a first edition of not less than.....copies nor more than.....copies on or before the.....day of.....printed on good paper and substantially bound. The book shall be sold at the price of

. Second or subsequent editions are to be a matter of agreement with the Author or his assigns and the Publisher, and the Publisher shall have no right nor be under any obligation to publish any such subsequent edition except by mutual agreement (*or, in place of the last sentence: "The Publisher may in his discretion publish second and subsequent editions in the same form and at the same price or in such form and at such price as may be mutually agreed."* *In the case of works requiring periodical revision the following may be added: "In the event of any second or subsequent edition being required, the Publisher shall before publishing such edition make a written request to the Author, his executors, administrators, or assigns, requiring him or them to bring the book up to date, and thereupon he or they shall without undue delay make or cause to be made by some competent person all necessary and proper additions and alterations; and, in the event of his or their failure so to do, the Publisher may employ some competent person to do the said work, the cost of which shall be deducted from the Author's credit for royalties on the ensuing accounts.)*

5. The Publisher shall submit the proof sheets of the first and all subsequent editions to the Author, who shall revise and correct the same. If the Author's alterations and corrections by reason of departures made by him therein from the original manuscript shall exceed.....per cent. of the cost of composition, the amount of such excess shall be deducted from his credit for royalties on the next ensuing account.

6. The Publisher shall pay to the Author the following royalty on the sale of copies, viz.: A royalty of.....per cent. of the said price at which the book shall be sold on each and

every of the first copies sold, and a royalty of per cent. of the said price on each and every copy sold thereafter.

7. The Publisher shall render to the Author an account of sales every six months, commencing six months after the date of the first publication. The balance due to the Author shall be payable three months after the half-yearly account is rendered.

8. The Author may require an inspection of the Publisher's books every months after the account of sales has been rendered, and also at the termination of this agreement. On the Author demanding in writing an inspection, the Publisher shall forthwith permit any accountant nominated by the Author to examine all books and documents relating to the publication and sale of the book.

9. The Author shall indemnify the Publisher against all damage in consequence of the book (which is believed by both parties hereto to be innocent) being libelous or containing any infringement of copyright.

10. The Publisher shall cause the book to be copyrighted in the name of the Author. Subject to the provisions of this agreement, the whole right, title and interest in the manuscript and the copyright in the book when published shall remain in the Author, who shall be entitled to assign the same, together with his rights and obligations under this agreement.

11. The Publisher shall not assign the benefit of or delegate his obligations as a Publisher under this agreement, except that the whole agreement may be assigned to such person or persons as may succeed him in his business as Publisher.

12. If at any time the copies of the book in stock are reduced to copies or less, the Author may propose in writing to the Publisher that a new edition shall be published, and if the Publisher does not publish a new edition within months of such proposal, the Author may by notice in writing terminate this agreement.

13. If any in six months after the first six months from the date of publication the sale of the book does not exceed copies, either the Publisher or the Author may by notice in writing terminate this agreement.

14. If the Publisher shall at any time commit an act of bankruptcy, the Author may by notice in writing terminate this agreement.

15. In the event of this agreement being terminated, the copies of the book remaining in stock, and any plates, engravings, or other plant specially prepared for the production of the book shall at the option of the Author be taken over by him at a fair valuation, or, if he fails to exercise such option within days after such termination, shall be sold by auction or otherwise, as the Publisher shall see fit. On such sale or valuation the Author shall be entitled to be credited with the royalties hereinbefore provided for according to the number of the copies which shall have been sold during the existence of this agreement.

Author and Publisher—Another Form.

Williston, Sections 413, 421, 841, 940, 1980.

AGREEMENT made between hereinafter called the Publisher, and hereinafter called the Author:

1. The Author agrees to prepare and deliver to the Publisher about a manuscript of to make about 1,000 regulation printed pages, including an index and introduction, to read and revise the proofs of said manuscript promptly upon their receipt from the printer and to return the same without delay.

2. The Author agrees that if the cost of the Author's alterations and corrections shall exceed ten per cent (10%) of the cost of printing, that the Publisher shall have the right to deduct the cost thereof, in excess of ten per cent (10%) from the consideration to be paid to the Author.

3. The Author agrees that he will protect and hold harmless the Publisher from any suit, judgment, claim or demand that may be instituted, obtained, made or suffered by the Publisher by reason of the infringement of any copyright resulting from the sale, delivery, or possession by the Publisher of the work covered by this agreement provided that the Publisher shall notify the Author of any such claim and shall allow the Author to defend the same.

4. The Publisher agrees to publish the said volume prepared by the Author or his said partners, as soon after the receipt of the manuscript as is practicable and agrees that it shall be called.....and agrees to pay the Author.....Dollars immediately upon the publication of the said book, in full payment for preparing the said book and for any and all right, title and interest of any description in and to said book.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written. In presence of:

.....(L. S.)

.....(L. S.)

Contract between Author and Publisher for Sale of Manuscript with Right to Copyright.

Williston—Sections 421, 841, 1940 and 1980.

AGREEMENT made..... between hereinafter called the Author, and....., hereinafter called the Publisher, WITNESSETH:

WHEREAS, the Author has written a book entitled....., which book has never been published and the Author is the sole owner of the manuscript thereof and of all right, title and interest therein.

Now, THEREFORE, the parties agree as follows:

1. The Author hereby grants to the Publisher the exclusive right to publish said book, and agrees that the Publisher shall be the sole owner of the copyright therein on publication.

2. The Author reserves to himself the sole right to translate, abridge, or dramatize the book. The Author agrees that he will not without the Publisher's consent publish any translation, abridgement, or dramatized version as a book. The Publisher agrees that the Author shall have the right to authorize the performance of any dramatized version of the book, and shall be the proprietor of the performing rights therein.

3. The Publisher agrees at his own expense and risk to publish said book in such style as he shall see fit, and agrees that the Author's name shall be conspicuously printed as Author

on the title page of every copy of the book sold or published. The Publisher agrees to publish the book under the title
, and not in any way alter the literary matter contained in the book.

4. The Publisher agrees to submit to the Author for revision the proofs of the first edition of the book, and the Author agrees to carefully revise and correct the same promptly.1

5. In consideration of the premises the Publisher shall pay to the Author \$. which shall be payable as follows: \$. on the delivery of the manuscript; and \$.
 on publication.

EMPLOYMENT CONTRACTS—MISCELLANEOUS

Agreement for Services of Baseball Player.

Williston, Sections 432 and 1450.

Griffin v. Brooklyn Ball Club, 68 App. Div. 566, 73 N. Y. Supp. 864 (aff'd.) 174 N. Y. 535, 66 N. E. 1109.

AGREEMENT^m ade. between herein-after referred to as the Employer, a club member of a league or association known as and, hereinafter referred to as the Player.

1. The Player, for the consideration hereinafter mentioned, hereby covenants and agrees to perform such duties pertaining to the exhibition of the game of base ball as may be required of him by the Employer or its assigns, at such times and places as the Employer or its assigns, may designate, for the period of months, commencing and ending The Player agrees not to perform such duties for any other person or corporation during said period, unless this contract be assigned as hereinafter prescribed in paragraph 14.

2. The Player agrees that he will yield a cheerful obedience to all directions that may be given to him by any officer, manager, or field captain of the Employer, or its assigns, and will hold himself subject to their orders at all times and places during the entire term of his employment.

3. The Player agrees that the Employer and its assigns, shall have the right, from time to time to establish such reasonable rules for the government of its players, at home or abroad,

at all times during the continuance of this contract, as may be necessary and expedient, and to discipline, suspend without pay (for definite period), or to expel them, and that these powers shall not be limited to cases of dishonest play or open insubordination, but shall include the rights to discipline, suspend without pay (for a definite period), or expel players for carelessness, or indifference, lack of sound physical condition, or such other conduct, condition or circumstance, impairing their faithful and thorough performance of duties, or that may be prejudicial to the interests of the Employer, or its assigns, in any respect, of all of which the Employer, or its assigns, shall be the exclusive judge. The Player agrees, at all times, during the term of his employment as aforesaid, to subject himself to such rules and discipline, to keep himself in the best physical condition to play ball at home and elsewhere, during the playing season, as may be required of him, with the utmost of his skill and ability, to cheerfully obey all rules and regulations of the Employer, or its assigns, and at all times, during the continuance of this contract to absolutely refrain from late hours and from any excess or dissipation in eating, drinking or otherwise.

4. It is agreed that if the Player shall, at any time during the said term of his employment as aforesaid, without the written consent of Employer, or its assigns, leave the service, or perform service, or agree to perform, in the future, services for any other club or organization whatever, or if he shall be guilty of offering, agreeing, conspiring or attempting to lose any game of ball, or if he shall be interested in any pool or wager thereon, he may be expelled by the Employer, or its assigns, from its club. Or, if the Employer, or its assigns, shall so elect, it may institute and prosecute proceedings in any Court of competent jurisdiction, either in law or in equity, to obtain damages for any breach of this contract, or to enforce the specific performance thereof by the Employer or to enjoin the Player from performing services for any other person or organization, during the period of service herein contracted for, and nothing herein contained shall be construed to prevent such remedy in the Courts, in case of any breach of this agreement by the Player, as the Employer, or its assigns, may elect to invoke.

5. It is agreed between the parties hereto, that if the Player shall at any time during the said term of his employment, be guilty of any excessive indulgence in malt or spirituous liquors, he shall be fined \$25 for the first offense, \$50 for the second offense, \$100 for the third offense, and that any subsequent offense shall be punished only by suspension without pay for the balance of the season. Should the said party of the second part at any time, during the said term of his employment, be guilty of gambling in any form, insubordination, or of any dishonorable or disreputable conduct, he may be fined \$100 or suspended by the Employer, or its assigns, from his said employment, or from the club, for such definite period of time as to the Employer may seem just and reasonable.

6. It is agreed that should the Employer, or its assigns, discipline the Player, or seek to enforce any of the penalties herein provided for, the Employer, or its assigns, shall immediately thereafter serve upon the Player, if demanded by the latter, a notice in writing, setting forth the character of the offense charged, the time and place of its alleged commission or omission, and the character of the penalty. If the Employer or its assigns, fail or decline to serve the notice above described, within three days after a demand that such a notice be served, then and in that event shall the penalty or penalties sought to be charged against the Player hereto, be deemed waived and abandoned. In all cases of suspension of the Player without pay, or of the infliction of pecuniary fines, he shall have the right of appeal to the Board of Directors of the League or Association, of which the Employer, or its assigns, is a Club Member.

7. It is agreed, that should the ability of the Player to perform his duties be impaired, or should he become ill from natural causes at any time during the term herein described, the Employer, or its assigns, may deduct from the amount then due or to become due under this contract, such proportion of the consideration money herein prescribed, as the period of his disability or impairment may bear to the term herein prescribed, but no deduction from the consideration herein prescribed shall be made by, or allowed to, the Employer, or its assigns, as against the Player, should the latter, during the

term herein prescribed, meet with any accident or injury while in the service of, or performing any duty for the club, and be incapacitated thereby from playing, but the Employer, or its assigns, shall have the right and privilege, should the Player meet with any accident or injury as last hereinbefore referred to, to release and discharge the Player, in which event the said release must be absolute, unrestricted, unconditional, complete and without prejudice.

8. It is agreed, that should the Player become ill or disabled, as provided in the last preceding paragraph, he, whenever and as often as he may be requested so to do by the Employer, or its assigns, shall submit himself to medical examination and treatment by a regular physician or surgeon in good standing, to be selected by the Employer, or its assigns. Such examination shall be at the expense of the Player.

9. It is agreed, that if the Player shall be guilty of any violation of Club Rules, or of the Constitution or Playing Rules of the said League and Association, or of any clause of this contract, or of disobedience, insubordination or neglect of duty, or of failure to keep himself in good physical condition, or of failure to preserve his playing ability unimpaired, he shall forfeit from his wages or salary due or to become due to him a sum not exceeding fifty dollars, for each of such offenses or failures, without suspending or excusing him from any duty or obligation under this contract.

10. It is agreed, that if the Employer, or its assigns, shall at any time, in accordance with the Playing Rules of the said League and Association, be required to transmit to the Secretary of said League and Association any fine or fines inflicted upon the Player by the umpire, in any game of ball, or if any fine imposed upon the Player by any other authority under such rules, or under the Constitution or Laws of said League and Association, shall be paid by the Employer or its assigns, or withheld by any other club or association from its share of gate receipts in any game, the amount of any such fine or fines shall be deducted and withheld by the Employer or its assigns, from the wages or salary due, or to become due, to the Player under this contract, in like manner as such forfeitures as he may incur under paragraph 9 of the contract are to be deducted

and withheld by the Employer, or its assigns, from his wages or salary accrued or to accrue.

11. It is agreed, that the Player undertakes to and will keep himself fully informed concerning all the Article of said Constitution, and of all of said Playing Rules, and all other Rules and Regulations of the said.....and....., now published or hereafter during his term of employment to be published and in force, and will, in like manner, inform himself concerning all rules and regulations at any time published, adopted or enforced by the Employer, or its assigns, during his term of employment, for the government of its players and other employees, and that he will observe and obey the same and strictly conform thereto. It is agreed that said Constitution, Playing Rules and Rules and Regulations are to be considered and taken as part of this contract, binding on the parties hereto, as if the same were written and fully set forth herein.

12. It is agreed, that in all matters of discipline, and at all times on the ball field, in practice or play, the Player shall be subject to the control and direction of the captain of the "nine" or team of the club of the Employer, or its assigns, for the time being, and shall cheerfully and promptly obey his directions and requests, and recognize and respect his authority in the management and control of the "nine" or team. In no event shall the Player refuse to play in any game of ball in which the "nine" of the club, or of any club to which he may be assigned, takes part, unless excused therefrom by the captain of the "nine," or incapacitated by reason of any bodily infirmity, illness, or lack of sound physical condition, or suffering from any accident or injury as provided in paragraphs 7 and 8 of this contract, but shall, at all times, during the playing season covered by this contract, hold himself in readiness to play whenever, wherever or with whatever club the management of the club or the captain may designate, except as aforesaid.

13. It is agreed, that should the Player violate any of the conditions, covenants or agreements on his part in this contract contained, the Employer, or its assigns, shall have the right to terminate this contract on reasonable notice, and no

further payments shall thereafter be due or payable to the Player, under this contract or otherwise. If the Player shall be expelled by said Employer, or its assigns, as herein provided, he shall thereupon forfeit all claim for wages or salary from and after the time of such expulsion.

14. It is agreed, that should the Employer resign, withdraw, or be expelled from the said League and Association, of which the Employer is now a Club Member, then this contract, and the rights of the Employer thereunder, may, at the option of the Player, after ten days' written notice, be annulled, ended and determined. But if, prior to such resignation, withdrawal or expulsion this contract shall be assigned (either by writing of the Employer, or by the operation of the provisions of said Constitution) to another Club Member of said League and Association, or to a Club Member of another League or Association, subject to the National Agreement of Professional Base Ball Associations, then in either event this contract shall continue in full force, with all its terms, provisions and conditions unimpaired and unaffected by such assignment, binding and obligatory as well upon the Player as upon the said Club Member accepting such assignment. Provided, that the Employer shall be liable to the Player for whatever proportion of the salary or compensation mentioned in paragraph 17 as may be earned, due or in arrears up to and including the expiration of the ten days' notice of annulment above recited or up to and including the day of assignment, if this contract shall have been previously assigned, to such other club. But if the Player shall, at the expiration of said ten days' notice of annulment, be indebted by reason of advances or otherwise to the Employer, said notice of annulment shall be void and of no effect, unless the amount of such indebtedness be paid or tendered to the Employer at or before the expiration of said ten days' notice of annulment.

15. It is agreed, that the Employer, or its assigns, shall furnish the Player with the usual playing uniforms and necessary outfit, exclusive of shoes, for which the said Employer, or its assigns, shall be allowed \$. toward the cost thereof, to be deducted from the wages or salary herein prescribed. The Employer, or its assigns, agrees to provide and furnish the

Player, while "abroad" or traveling with the "nine" or team in other cities, with proper board, lodging, and to pay all his proper and necessary traveling expenses.

16. It is agreed, that the Employer, or its assigns, may, at any time after the beginning and prior to the completion of the term of this contract, give the Player ten days' written notice of its option and intention to end and determine all its liabilities and obligations under this contract, in which event, upon the expiration of said ten days, all liabilities and obligations undertaken by the Employer, or its assigns, in this contract, shall at once cease and determine; the Player shall thereupon be also freed and discharged from his obligations hereunder, and shall have no claim for salary or other compensation for any period after said ten days. If such notice be given to the Player while "abroad" with the club, he shall be entitled, at or before the expiration of said ten days, to his necessary traveling expenses to But if this contract shall be so ended and determined by the Employer, or its assigns, after the beginning and before the end of the term of employment under this contract, without any fault or neglect of duty on the part of the Player, then the Player shall be entitled to salary or compensation at the contract rate for said ten days in addition to the sum earned and due, and unpaid to him at the time of the giving of notice of termination as aforesaid, whether during said ten days the Player shall be required to perform services, or not, but he may be required to perform services under this contract, during said ten days, at the option of the Employer, or its assigns, without affecting the validity or force of such notice.

17. In consideration of the faithful performance of the conditions, covenants, undertakings and promises herein by the Player, inclusive of the concession of the options of release and renewals prescribed in paragraphs 16 and 18 the Employer for itself and its assigns, hereby agrees to pay the Player for his services for said term,dollars, payable as follows:

18. It is agreed for the consideration above mentioned, that the Employer, or its assigns, shall have the option or right to renew this contract with all its terms, provisions and conditions

for another period of.....months, beginning....., and for a similar period in.....successive years thereafter, and the Player agrees to perform similar services and be subject to all the obligations, duties and liabilities prescribed in this contract for the period or periods of such renewal or renewals, provided only that written notice of the exercise of such option of renewal be served upon the Player prior to the..... day of.....of the current year of this contract and of the current year of each renewal thereof.

LABOR PROTOCOLS

The Hart, Schaffner & Marx Labor Agreement.¹

Williston—Sections 1654-1656.

PREAMBLE

BY MR. E. J. WILLIAMS, Chairman of The Board of Arbitration

1. The parties whose names are signed hereto purpose entering into an agreement for collective bargaining with the intention of agreeing on wage and working conditions and to provide a method for adjusting any differences that may arise during the term of this contract.

2. In order that those who have to interpret this instrument may have some guide as to the intentions and expectations of the parties when entering into this compact, they herewith make record of their spirit and purpose, their hope and expectations, so far as they are now able to forecast or state them.

3. On the part of the employer it is the intention and expectation that this compact of peace will result in the establishment and maintenance of a high order of discipline and efficiency by the willing co-operation of union and workers rather than by the old method of surveillance and coercion; that by the exercise of this discipline all stoppages and interruptions of work, and all wilful violations of rules will cease; that good standards of workmanship and conduct will be maintained and a proper quantity, quality and cost of production will be assured; and that out of its operation will issue such co-operation and good will between employers, foremen, union and workers as will prevent misunderstanding and friction and make for good team work, good business, mutual advantage and mutual respect.

4. On the part of the union it is the intention and expectation that this compact will, with the co-operation of the employer, operate in such a way as to maintain, strengthen, and solidify

¹ For convenience, the paragraphs of this agreement have been numbered.

its organization, so that it may be made strong enough, and efficient enough, to co-operate as contemplated in the preceding paragraph; and also that it may be strong enough to command the respect of the employer without being forced to resort to militant or unfriendly measures.

5. On the part of the workers it is the intention and expectation that they pass from the status of wage servants, with no claim on the employer save his economic need, to that of self-respecting parties to an agreement which they have had an equal part with him in making; that this status gives them an assurance of fair and just treatment and protects them against injustice or oppression of those who may have been placed in authority over them; that they will have recourse to a court, in the creation of which their votes were equally potent with that of the employer, in which all their grievances may be heard, and all their claims adjudicated; that all changes during the life of the pact shall be subject to the approval of an impartial tribunal, and that wages and working conditions shall not fall below the level provided for in the agreement.

6. The parties to this pact realize that the interests sought to be reconciled herein will tend to pull apart, but they enter it in the faith that by the exercise of the co-operative and constructive spirit it will be possible to bring and keep them together. This will involve as an indispensable prerequisite the total suppression of the militant spirit by both parties and the development of reason instead of force as the rule of action. It will require also mutual consideration and concession, a willingness on the part of each party to regard and serve the interests of the other, so far as it can be done without too great a sacrifice of principle or interest. With this attitude assured it is believed no differences can arise which the joint tribunal cannot mediate and resolve in the interest of co-operation and harmony.

SECTION I

7. *Administration.* This agreement is entered into between Hart, Schaffner & Marx, a corporation, and the Amalgamated Clothing Workers of America, and is effective from May 1st, 1916, to April 30th, 1919.

8. *Officers of the Agreement.* The administration of this agreement is vested in a Board of Arbitration and a Trade Board, together with such deputies, officials and representatives of the parties hereto as are now or hereafter may be appointed for that purpose, whose duties and powers are hereinafter described.

9. *Board of Arbitration.* The Board of Arbitration shall have full and final jurisdiction over all matters arising under this agreement and its decisions thereupon shall be conclusive.

10. It shall consist of three members, one of whom shall be chosen by the union, one by the company, and the third shall be the mutual choice of both parties hereto and shall be the chairman of the Board. It is agreed that the board as constituted under the old agreement shall be continued during the present agreement, William O. Thompson being the choice of the union, Carl Meyer, the choice of the company, and J. E. Williams, chairman, being chosen by agreement of both parties.

11. It shall be the duty of the Board to investigate, and to mediate or adjudicate all matters that are brought before it and to do all in its power to insure the successful working of the agreement. In reaching its decision the Board is expected to have regard to the general principles of the agreement; the spirit and intent, expressed or implied, of the parties thereto; and, especially, the necessity of making the instrument workable, and adaptable to varying needs and conditions, while conserving as fully as possible the essential interests of the parties involved.

12. The line of practice already developed by the Board shall be continued. This contemplates that questions of fact and testimony shall in the main be considered by the Trade Board while the Board of Arbitration will concern itself mainly with questions of principle and the application of the agreement to new issues as they arise. But this is not to be construed as limiting the power of the Board, which is broad enough to make it the judge of facts as well as principle when necessary, and to deal with any question that may arise whose disposition is essential to the successful working of the agreement.

13. By agreement between the chief deputies, cases may be heard and decided by the chairman of the Board alone.

14. *Emergency Powers.* If there shall be a general change in wages or hours in the clothing industry, which shall be suffi-

ciently permanent to warrant the belief that the change is not temporary, then the Board shall have power to determine whether such change is of so extraordinary a nature as to justify a consideration of the question of making a change in the present agreement, and, if so, then the Board shall have power to make such changes in wages or hours as in its judgment shall be proper.

15. *Trade Board.* The Trade Board is the primary board for adjusting grievances, and shall have original jurisdiction over all matters arising under this agreement and the decisions relating thereto, and shall consider and dispose of all such matters when regularly brought before it, subject to such rules of practice and procedure as are now or may be hereafter established.

16. The Board shall consist of eleven members, all of whom excepting the chairman, shall be employees of Hart, Schaffner & Marx. Five members shall be chosen by the company, and five by the union, and it is understood that these shall be selected in such manner as to be representative of the various departments—cutting and trimming, coat, vest and trousers.

17. The Board shall be presided over by a chairman who shall represent the mutual interests of both parties hereto, and especially the interest of the successful working of this agreement. He shall preside at meetings of the Board, assist in investigation of complaints, endeavor to mediate conflicting interests, and, in case of disagreement, shall cast the deciding vote on questions before the Board. He shall also act as umpire on the cutting room commission, and perform such other duties as may be required of him by the agreement or by the Board of Arbitration.

18. The chairman shall hold office during the term of the agreement, and in case of death, resignation or inability to act, the vacancy shall be filled by the Board of Arbitration.

19. It is especially agreed that James Mullenbach, chairman under the former agreement, shall be retained under the present agreement.

20. Meetings of the Board shall be held whenever necessary at such times as the chairman shall direct. Whenever an authorized representative of both parties is present, it shall be

considered a quorum. Each party is privileged to substitute an alternate in place of the regular member whenever they so desire. Should either side, after reasonable notice, fail to send a representative to sit on the Trade Board, then the chairman may proceed the same as if both parties were present.

21. Members of the Board shall be certified in writing to the chairman by the Joint Board of Hart, Schaffner & Marx, and the proper official of the company and any member, other than the chairman, may be removed and replaced by the power appointing him.

22. *Deputies.* The deputies are the officers having direct charge of the execution of the provisions of this agreement in the interest of their respective principals. Each of the parties hereto shall have a sufficient number of deputies to properly take care of the work necessary to be done to keep the docket from being clogged with complaints, and to insure an efficient working of the agreement. They shall have power to investigate, mediate, and adjust complaints, and settlements made by the deputies of the parties in dispute shall be legally binding on their principals. In case of appeal to the Trade Board or Board of Arbitration the deputies may represent their respective principals before these Boards, and shall have power to summon and examine witnesses, to present testimony or evidence, and do such other things as may be necessary to place their case properly before the trial body, and such body shall see to it that they be given adequate opportunity and facility for such presentation, subject to the usual rules of procedure.

23. One of the deputies on each side shall be known as the chief deputy, and the statement of the chief deputy shall be regarded as an authoritative presentation of the position of his principal in any matter in controversy. Unless reversed or modified by either of the Trial Boards the agreement of the chief deputies in all matters over which they or their principals have authority shall be observed by all parties.

24. The union deputy shall have access to any shop or factory for the purpose of making investigations of complaints; but he shall in all cases be accompanied by the representative of the employer. Provided, that the latter may at his option waive his right to accompany him, also that in minor matters where

convenience or expedition may be served the union deputy may call out the shop chairman to obtain information without such waiver.

25. The deputies shall be available to give their duties prompt and adequate attention, and shall be subject to the direction of the Trade Board in all matters relating to the administration of this agreement.

26. *Qualifications of Deputies.* Each deputy, in order to qualify for duty, must have a commission signed by the proper official representing the union or the company, and said commission must be countersigned by the chairman of the Trade Board. Deputies must be either employés of Hart Schaffner & Marx, or must be persons who are connected with the Joint Board of Hart Schaffner & Marx.

27. *Shop Representative.* The union shall have in each shop a duly accredited representative authorized by the Joint Board who shall be recognized as the officer of the union having charge of complaints and organization matters within the shop. He shall be empowered to receive complaints and be given sufficient opportunity and range of action to enable him to make proper inquiry concerning them. When necessary for the shop representative to leave his place to investigate complaints the foreman may, if he deems it necessary, ask to be informed of the purpose of his movements, and the representative shall comply with his request.

28. It is understood the shop representatives shall be entitled to collect dues and perform such other duties as may be imposed on him by the union, provided they be performed in such manner as not to interfere with shop discipline and efficiency.

29. It is expected that he will represent the co-operative spirit of the agreement in the shop, and shall be the leader in promoting that amity and spirit of good will which it is the purpose of this instrument to establish.

30. The co-operative spirit enjoined on the shop representative in the foregoing paragraph shall be expected in equal degree from the shop superintendent, who shall be expected to contribute his best efforts to promote harmony and good will in the shops.

SECTION II

PROCEDURE

31. *When Grievances Arise.* When a grievance arises on the floor of the shop, the complainant shall report it with reasonable promptness to the shop representative, who shall present it without undue delay to the shop superintendent. These two may discuss the complaint in a judicial temper, and may endeavor to agree to an adjustment. It is understood, however, that they are not a trial board, and it is not expected that they shall argue or dispute over the case. In the event that the shop representative is not satisfied with the action of the superintendent, he may promptly report the matter to his deputy, with such information as will enable him to deal advisedly with the case.

32. Failure to comply with these provisions for the regulation of shop transactions shall subject the offender to discipline by the Trade Board.

33. Informal oral adjustments made by shop officials are subject to revision by the Trade Board, and are not binding on their principals unless ratified by the chief deputies.

34. *Adjustment by Deputies.* When the shop officers report a disputed complaint to their respective deputies, they shall give it such investigation as its nature or importance demands, either by visitation to the shop or by the taking of testimony, and shall make an earnest endeavor to reach a settlement that will be just and satisfactory to all the parties in dispute.

35. *Disagreement by Deputies.* In the event of a failure to agree on an adjustment, the deputies shall certify the case for trial to the Trade Board, agreeing on a written statement of facts if possible. In certifying such disagreement the deputy appealing to the Board shall file a statement stating specifically the nature of the complaint alleged with the Trade Board, and shall furnish a copy to the representative of the dissenting party who shall have, at least, twenty-four hours to prepare his answer, unless otherwise agreed on; provided, that by direction of the chairman of the Trade Board emergency cases may be brought to trial at once. Where no statement has been filed

in writing within a reasonable time after disagreement of the deputies, it may be assumed that the disagreement no longer exists, and the case may be considered settled.

36. *Dockets and Records.* The chairman of the Trade Board shall keep a docket in which all cases shall be entered in the order of their arising. Unless otherwise directed by the chairman, cases shall be heard in the order of their filing. Duplicate records shall be made by the Board, one copy of which shall be retained by the Chairman, and one given to the chief deputy for the union. Such records shall contain all complaints filed with the Board; orders or decisions of the Board, or of the deputies or of any committee; calendars of pending cases, and such other matter as the Trade Board may order placed upon the records.

37. *Direct Complaints.* Complaints may be made directly by either party, without the intervention of a shop representative, whenever it desires to avail itself of the protection of the agreement; but a statement of the facts and grounds of such complaints must be filed in writing as hereinbefore provided. Unless written notice has been filed, it may be presumed, officially, that no complaint exists.

38. *Decisions, Appeals, etc.* All decisions of the Trade Board shall be in writing, and copies given to the representatives of each party. Should either party desire to appeal from the decision, it shall file with the Board a notice of its intention so to do within ten days of the date of the decision. Or if either party desires an amendment or modification of the decision, or a stay of execution pending the appeal, it may make a motion in writing to that effect, and the chairman shall use his discretion in granting it. In certifying the case to the Board of Arbitration, the chairman shall make a summary of the case in writing, giving the main facts and the grounds for his decision.

39. *Number of Higher Trial Board.* On being notified of the appeal to the Board of Arbitration, said appeal may be heard by the chairman, as representative of the Board, if both parties agree to it and it is acceptable to him. He shall, however, have the right to call for the full Board if in his judgment the situation requires it. In the event that the representative of the

Board of either party is unable to attend a Board meeting, such party, may at its discretion, furnish a substitute.

40. *Hearing, How Conducted.* The chairman shall determine the time and place of meeting and shall notify all the parties in interest. Each party shall prepare the case in advance, and have its testimony, evidence, and facts in readiness for the hearing. The Board shall give each party ample opportunity to present its case, but shall be the judge of procedure and shall direct the hearing as to its order and course. After giving an adequate hearing of the evidence and arguments the Board shall render its decision in writing, and shall furnish copies to the chief deputies of each party and to the chairman of the Trade Board. In the event that the Board is unable to reach a unanimous decision, the decision of a majority shall be binding.

41. *Motions for Rehearing.* The Board may after a reasonable time grant a rehearing of any decision, if, in its judgment, there appear sufficient reasons for doing so. Decisions are to be regarded as the Board's best solution of the problem offered to it at the time of hearing, but as the problem changes with time and experience it is proper there should be afforded a reasonable opportunity for rehearing and review. Motions for a rehearing shall be made in writing, and shall set forth the reason for the request.

42. *Enforcement of Decisions.* All decisions, whether of deputies, Trade Board, or Board of Arbitration, shall be put into execution within a reasonable time, and failure to do so, unless for explainable cause, shall convict the delinquent party of disloyalty to the agreement. The party in error shall be notified of the charge, and suitable discipline imposed. The chief deputy of each party shall be held responsible in the first instance, for enforcement of decisions or adjustments herein referred to, and shall be held answerable, primarily, to the Trial Board.

SECTION III

RATES AND HOURS

43. *Schedules of Piece Work Rates.* The prices and rates of pay that are to be in force during the life of this agreement are

set forth in the schedules prepared for that purpose, duly authenticated by the proper signatures, and which are made a part hereof.

44. *Hours of Work.* The hours of work in the tailor shops shall be forty-nine per week, with the Saturday half holiday.

45. *Minimum Wage.* The minimum wage scale in the tailor shop shall be as follows:

	1st month	2nd month	3rd month
Machine operators (male and female).\$	5.00	\$ 7.00	\$ 9.00
Women in hand work sections	5.00	6.00	8.00
Men, 18 years and over, not operators.	8.00	10.00	12.00
All men not included in above	8.00	9.00	10.00
Inspector tailors (men)	16.00		

46. *Overtime.* For work done in excess of the regular hours per day, overtime shall be paid to piece workers of 50% in addition to their piece work rates; to the week workers at the rate of time and a half; no work shall be allowed on Sundays or legal holidays. Christmas, New Years, Decoration Day, Fourth of July, Labor Day and Thanksgiving Day shall be observed as holidays.

47. *Week Worker's Scale.* It is agreed that the question of classified wage scale, and periodical increase of pay for service, shall remain in the hands of Messrs. Mullenbach, Campbell and Marimpietri, to whom it was referred by the Conference Committee, until they are ready to report.

48. The week work schedule as agreed on by the committee, which has been accepted and signed by both the parties hereto, is hereby made a part of this agreement, subject to any changes that may be made as provided for above.

49. *Piece Rate Committee.* Whenever a change of piece rate is contemplated the matter shall be referred to a specially appointed rate committee who shall fix the rate according to the change of work. If the committee disagree the Trade Board shall fix the rate. In fixing the rates, the Board is restricted to the following rule:

50. Changed rates must correspond to the changed work and new rates must be based upon old rates where possible.

51. *Hour Rates for Piece Workers.* In case workers are

changed from piece to hour work, the hour rates for such piece workers shall be based on their earnings on piece work.

52. *Changing Operations.* In the event a piece worker is required to change his mode of operation so that it causes him to lose time in learning, his case may be brought to the Rate Committee for its disposition.

SECTION IV

PREFERENCE

53. *The Preferential Shop.* It is agreed that the principle of the preferential shop shall prevail, to be applied in the following manner:

54. Preference shall be applied in hiring and discharge. Whenever the employer needs additional workers, he shall first make application to the union, specifying the number and kind of workers needed. The union shall be given a reasonable time to supply the specified help, and if it is unable, or for any reason fails to furnish the required people, the employer shall be at liberty to secure them in the open market as best he can.

55. In like manner, the principle of preference shall be applied in case of discharge. Should it at any time become necessary to reduce the force in conformity with the provisions of this agreement the first ones to be dismissed shall be those who are not members of the union in good and regular standing.

56. *Discipline of Union Members.* The Trade Board and Board of Arbitration are authorized to hear complaints from the union concerning the discipline of its members and to take any action necessary to conserve the interests of the agreement. The members referred to herein are those who have joined, or who may hereafter join, the Amalgamated Clothing Workers of America.

57. *Preference in Transfers.* If it becomes necessary to transfer workers from one shop to another, the non-union workers shall be the first to be transferred, unless at request of the foreman, union workers are willing to go.

58. Or if it becomes necessary in the judgment of the company to transfer a worker from a lower to a higher paid section or operation, it is agreed that union workers shall have prefer-

ence in such transfers. Provided, that nothing herein shall be construed to be in conflict with the provision relating to transfer for discipline and, provided, that they are qualified to perform the work required and that their departure from their section does not work to the disadvantage of that section.

59. *Overcrowding of Sections.* Overcrowding of sections is important in this agreement as the point at which the provision for preference becomes operative. It is agreed that when there are too many workers in a section to permit of reasonably steady employment, a complaint may be lodged by the union, and if proved, the non-union members of the section, or as many of them as may be required to give the needed relief, shall be dismissed. For the purpose of judging the application of preference the Trade Board shall take into consideration the actual employment condition in the section, as to whether there are more people employed at the time of complaint than are needed to do the work, and whether they, or any of them, can be spared without substantial injury to the company. If it is found that the section can be reduced without substantial injury, the Trade Board shall enforce the principle of preference as contemplated in the agreement.

60. *Avoidance of Injury.* Among the things to be considered in the enforcement of preference are the needs of maintaining an adequate balance of sections, of the requirements of the busy season, of the difficulty of hiring substitutes, and the risk of impairing the efficiency of the organization. The claims for enforcement of preference and for avoidance of injury to the manufacturing organization are to be weighed by the Trade Board, and the interests of both claims safeguarded as far as possible, the intention being to enforce preference so far as it can be done without inflicting substantial injury on the company.

61. *Preference of Seniority.* If in order to properly balance sections, a reduction of force be required greater than can be secured by the laying off of a non-union worker as provided for herein, then there may be laid off those who are members of the union in the order of their seniority who have been in the employ of the company for a period of six months or less, provided that any exceptionally efficient worker, or any especially valu-

able member of the union, may be exempted from the rule of seniority. Provided, also, the company shall give notice to the chief deputy of its intention to discharge under this clause, and if he fails to agree the matter shall be referred to the Trade Board.

SECTION V

WORKING CONDITIONS

62. *Discipline.* The full power of discharge and discipline remains with the company and its agents; but it is understood that this power should be exercised with justice and with due regard to the reasonable rights of the employe, and, if an employe feels that he has been unjustly discharged, he may have appeal to the Trade Board, which shall have the power to review the case.

63. Every person suspended shall receive a written notice, directing him to appear at the office of the company for a decision. Every suspension notice properly presented to the discipline-officer of the company must be disposed of within six working hours from the time of its presentation and a definite decision announced to the suspended person.

Stoppages. In case of a stoppage of work in any shop or shops, a deputy from each side shall immediately repair to the shop or shops in question.

64. If such stoppage shall occur because the person in charge of the shop shall have refused to allow the people to continue work, he shall be ordered to immediately give work to the people, or in case the employes have stopped work, the deputies shall order the people to immediately return to work, and in case they fail to return to work within an hour from such time such people shall be considered as having left the employ of the corporation, and shall not be entitled to the benefit of these rules.

65. *Detention in Shop.* Workers shall not be detained in the shops when there is insufficient work for them. The company or its agent shall exercise due foresight in calculating the work available, and as far as practicable shall call only enough workers into the factory to do the work at sight. And if a

greater number report for work than there is work for, those in excess of the number required shall be promptly notified and permitted to leave the shop. The work on hand shall be divided as equally as may be between the remaining workers.

66. *Complaint Slips.* Before or at the time of entering any complaint against any employe in the complaint book said employe shall be notified thereof so he may have the opportunity of notifying a deputy of the Board and have said complaint investigated.

67. *Lay-Offs.* Workers who are dismissed may be given lay-off memoranda allowing them to return to their shops or factories, trimming or cutting rooms, when there is need for their services. Provided, this clause shall not be construed to give such worker precedence over union members, or to interfere in any way with the provision for preference in hiring.

68. *Transfer of Employes.* The company has the right to transfer employes for purposes of administration or discipline, subject to review by the Trade Board. If the Board finds that any transfer is being made to lower wages, or for any discrimination or improper purpose, or if injustice is being done the worker by the transfer, the Board may adjust the complaint.

SECTION VI

GENERAL PROVISIONS

69. *Lay Off of Workers.* No union member who is a permanent worker shall be laid off in the tailor shops except for cause, whether in the slack or busy season, except as provided herein. Cause for temporary lay off may be alternation of working periods in slack times, reorganization or reduction of sections, lawful discipline, and such other causes as may be provided for herein or directed by the Trade Board.

70. *Co-operation to Abolish Waiting.* The company and the deputies have agreed to co-operate together to abolish all unnecessary waiting in the shops.

71. *Division of Work.* During the slack season the work shall be divided as near as is practicable among all hands.

72. *Abandonment of Position.* Whenever any employe shall have absented himself from his accustomed place without giving

an acceptable reason to the foreman or other officers in charge of his work before the end of the second business day of his absence, the employer may consider his position forfeited. Notice of absence and reason therefor must be given to foreman by messenger, mail or telephone.

73. *Abolishment of Section.* When sections are abolished, the company and its agents shall use every effort to give the displaced workers employment as much as possible like the work from which they were displaced, within a reasonable time.

74. *Sickness.* Any workers who are absent on account of sickness shall be reinstated in their former positions if they return within a reasonable time.

75. *Trade Board Members.* Complaints against members of the Trade Board as workmen are to be made by the foremen to the Trade Board. Any action of any employe as a member of the Trade Board shall not be considered inimical to his employment with the corporation. No member of a Trade Board shall sit on a case in which he is interested, or to which he is a party.

76. *Union Membership.* The provisions for preference made herein require that the door of the union be kept open for the reception of non-union workers. Initiation fee and dues must be maintained at a reasonable rate, and any applicant must be admitted who is not an offender against the union and who is eligible for membership under its rules. Provided, that if any rules be passed that impose on unreasonable hardship, or that operate to bar desirable persons, the matter may be brought before the Trade Board or Board of Arbitration for such remedy as it may deem advisable.

77. *The Old Agreement.* The provisions of the old agreement and the decisions based thereon shall be regarded as being in force except as they may be modified by, or are not in conflict with the provisions of the present agreement.

SECTION VII

LOYALTY TO THE AGREEMENT

78. Experience suggests that there are certain points of strain which it would be wise to recognize in advance and to safe-

guard as far as possible. Among the points to be safeguarded are the following:

1. When dissatisfaction arises over change of price or working conditions. It is believed that the agreement provides a remedy for every such grievance that can arise, and all complainants are urged and expected to present their cases to the proper officials and await an adjustment. If any one refuses to do this, and, instead, takes the law in his own hands by inciting a stoppage or otherwise foments dissatisfaction or rebellion, he shall, if convicted, be adjudged guilty of disloyalty to the agreement and be subject to discipline by the Trade Board.

2. Strain may arise because of unsatisfactory personal relations between workers and officials. The company's officials are subject to the law as are the workers, and equally responsible for loyalty in word and deed, and are subject to discipline if found guilty of violation. Any complaints against them must be made and adjudicated in the regular manner. They are to respect the workers and be respected by them in their positions, and supported in the proper discharge of their duties. Any one indulging in improper language or conduct calculated to injure them or to break down their authority in the shop shall be adjudged guilty of disloyalty and disciplined accordingly.

3. Officials of the union are equally under the protection of the agreement when in the exercise of their duties as are the officials of the company, and any words or acts tending to discredit them or the union which they represent, or which are calculated to injure the influence or standing of the union or its representatives shall be considered as disloyalty to the agreement and the offender shall be subject to discipline by the Trade Board.

Provided, however, that no reasonable criticism or expression of disagreement expressed in proper language shall be deemed a violation within the meaning of this section.

4. If any worker shall willfully violate the spirit of the agreement by intentional opposition to its fundamental purposes and especially if he carry such wilful violation

into action by striking and inciting others to strike or stop work during working hours, he shall, if charge is proven, be subject to suspension, discharge or fine. Provided, that if a fine is imposed its amount shall be determined by the chairman of the Trade Board and shall not be less than \$1.00 or more than \$5.00 for each offense.

5. If any foreman, superintendent or agent of the company shall wilfully violate the spirit of this agreement and especially if he fails to observe and carry out any decision of the Trade Board or Board of Arbitration, he shall, if charge is proven, be subject to a fine of not less than \$10.00 or more than \$100 for each offense, at the discretion of the chairman of the Trade Board.

SECTION VIII

CUTTING AND TRIMMING DEPARTMENTS

79. The cutting and trimming departments shall be subject to the general provisions of this agreement, and to the bases and provisions of the old agreement, except as they may be modified by, or found to be in conflict with, the special provisions agreed on for these departments. It is understood that these special provisions are intended to change certain features of the old agreement, and if they are found to be in conflict, the new provisions are to be considered as the guide of practice, and as representing the latest and, therefore, the most authoritative expression of the wills of the parties hereto. The new special provisions are as follows:

1. The principle of preference as applied in the cutting and trimming rooms shall be as before, except that the clause relating to cutters who are exempted from union obligations is expressly defined as being strictly limited to the individuals now on the exemption list. Should the number on that list be for any reason reduced, it is understood that no other cutters and trimmers can be added.

2. The company shall not reduce the wages of any cutter. The company shall report to the commission all failures of cutters to produce their quota of work when in its judgment the delinquency is not caused by the condi-

tions of the work. The commission shall investigate the matter and advise with the cutter concerning it. At the end of a period sufficiently long to determine the merits of the case, the cutters' commission shall, if it deem necessary, find measures to discipline cutters to conform to their production. In judging the merits in such instances, the commission shall use the principle of comparative efficiency.

3. All cutters whose present wages are less than \$26.00 per week shall receive an increase of \$1.00 per week. This increase shall not be taken into account by the commission in calculating the quota of work required by such cutter.

4. The company shall prefer men now in the trimming room when increasing the number of apprentice cutters.

5. The salaries of experienced cutters who are employed temporarily shall for the first two weeks be at a rate not less than the salaries they received in their last position. After two weeks, the temporary cutters shall be paid on the same basis as the regular men, their salary to be fixed by the cutters' commission on the basis of their production, and their comparative efficiency.

6. The company shall continue the practice of paying cutters for Christmas, New Years, Decoration Day, Fourth of July, Labor Day and Thanksgiving Day.

80. *Paper Cutting Department.* All men who cut paper patterns shall be members of the union; except that, by special agreement, one man, Mr. Lindsay, may be exempted from such requirement, and shall be added to the existing exempted group.

81. The three apprentices now in the paper cutting department shall have the status, privileges and protection of the regular cutting room apprentices, including the right to learn all branches of the trade, and be subject to the same requirements and provisions. The ratio of apprentices to cutters in the paper cutting department shall not exceed that which obtains now, namely, three apprentices to seven permanent cutters.

82. The company may employ such other boy help in this department as is needed, and such boys, may at its option, be

promoted to positions as apprentices when vacancies arise, but not in excess of the total number of apprentices provided for in the agreement.

83. Permanent graders employed in the grading department may work at paper cutting temporarily when there is not sufficient work in their own department. Boys, who are not apprentices, shall not take the places of blockers in any permanent manner, but they may for short times, to fill odd unemployed hours, be permitted to try to do blocking in the slack seasons.

84. *Damage Department.* All employes in the damage department who recut parts of garments shall be members of the union or exempted men. The manager of the department and helpers who do not cut parts shall not be members of the union.

85. *Trimming Department.* 1. All men now on the trimmers pay roll who are receiving not to exceed \$15.00 are to be increased \$2.00 per week. All men receiving a weekly wage of over \$15.00 and not exceeding \$20.00 shall receive an increase of \$1.00 per week. Except that apprentice trimmers having been employed less than 6 months are to receive an increase of \$1.00 per week.

2. The following periodical increases shall be granted during the term of this agreement: Men receiving under \$12.00 shall receive an increase of \$1.00 per week every three months until their wages shall be \$12.000 per week. Men receiving over \$12.00 and less than \$18.00 shall receive an increase of \$1.00 every six months until their wages shall be \$18.00 per week. Men receiving over \$18.00 per week and less than \$20.00 shall receive an increase of \$1.00 per week every year until their wages shall be \$20.00 per week.

3. All men starting to work on the band-saw machines shall receive not less than \$18.00 per week and shall receive an increase of \$1.00 per week every six months until their wages are \$20.00. Thereafter, they shall receive an increase of \$1.00 per week every year until they reach the rate of \$24.00. No man shall be assigned to the band-saw machine permanently until they have been employed in the trimming room two years.

4. So far as practicable, the apprentices in the trimming room shall begin on their work on the lower grades of the trade and shall be advanced gradually to the more difficult ones.

5. Apprentices shall not be permanently transferred to work requiring the use of any electric machines until they have been employed for one year or more.

6. The wages of experienced men employed shall be determined in the same manner as in the cutting room.

7. The jack boys and canvas pickers are to be under the jurisdiction of the union, with this express provision: that these two sections are not to be under the agreed scale for trimmers, but are to be subject to a special scale of wages, which scale is to be subject to the decision of the board of arbitration.

Williston, Sections 1654-1656

AGREEMENT

BETWEEN

MANHATTAN SILK CO., College Point, L. I.
SMITH & KAUFMANN, Inc., New York City.
ELANDES RIBBON CO., Inc., Whitestone, N. Y.
STAR RIBBON MFG. CO., Astoria, L. I.

and

AMALGAMATED TEXTILE WORKERS OF AMERICA

By

New York Silk Ribbon Local Union
Queens Silk Ribbon Local Union
Brooklyn Silk Ribbon Local Union
Board of Greater N. Y. Silk Ribbon Local Unions

AGREEMENT ¹

PREAMBLE

This collective bargaining agreement is entered into with the intention of providing a method for adjusting all differences that may arise in regard to wage and working conditions of the weavers working on ribbon looms in Greater New York in the employ of the manufacturers signing this agreement.

On the part of the employers, it is the expectation that this compact of peace will result in the establishment and maintenance of a high order of efficiency and discipline by the willing co-operation of the weavers.

On the part of the union, it is the expectation that this compact will insure that the organization of the weavers will be strong enough to discipline its own members in accordance with the terms of this agreement.

The parties to this pact realize that the interests sought to be reconciled herein ordinarily tend to pull apart, but they enter into this agreement in the faith that by the exercise of a co-operative and constructive spirit it will be possible to bring and keep them together. This will involve as an indispensable prerequisite the suppression of the militant spirit by both parties and the development of reason instead of force as the rule of action. It will require also mutual consideration and concession and a willingness on the part of each party to regard and serve the interests of the other for the common good. With this attitude assured it is believed no differences can arise which this machinery cannot mediate and resolve in the interest of co-operation and harmony.

Public interest requires increasing production as a prime factor in reducing commodity prices. Wages, hours and working conditions should be regulated by this requirement. Weavers should not intentionally restrict individual output to create an artificial scarcity of labor as a means of increasing wages or of equalizing the productivity and wages of weavers having different degrees of skill and ability; employers should not intentionally restrict production to create an artificial

¹ Sub-divisions of Sections have been lettered for convenience.

scarcity of the product in order to increase prices, nor should employers invoke methods that prove hurtful to the health, future productivity or welfare of the weavers. Any action by a weaver or a union official directed against the prestige and welfare of an employer, and any action by an employer directed towards undermining the union shall be a distinct violation of this agreement.

Section 1. Parties to the Agreement. This agreement is entered into between the manufacturing concerns, whose names are subscribed hereto, known as the employers, and Amalgamated Textile Workers of America, known as the union. This agreement shall be considered ratified and in existence only upon the execution of same in the following manner: Each and every employer, through a duly authorized member of the firm or officer of the corporation, must sign this agreement; on the part of the union, the official or accredited representative of the New York, Brooklyn and Queens Silk Ribbon local unions of the Amalgamated Textile Workers of America and of the national organization of the Amalgamated Textile Workers of America, shall sign this agreement upon an authority received from a two-thirds vote of the members of each of the local unions, which vote shall be by secret ballot and a certified copy of such votes shall be submitted to the employers. In addition thereto, the weavers in the particular shops of each of the employers signing this agreement shall similarly denote their acceptance of this agreement by authorizing three representative weavers from each shop to sign this agreement on behalf of the weavers they represent. This agreement shall be effective as to the wages and conditions of employment of weavers employed by the employers immediately upon their return to work.

Section 2. Return to Work. The weavers in all shops agree to return to work immediately after the signing of this agreement on the same conditions as existed on March 8, 1920, with the exceptions that there shall be an advance of seven and one-half per cent. ($7\frac{1}{2}\%$) on the piece work rates, and the minimum ratings in the individual shops, in existence on March 8, 1920, of 70 cents per hour and 75 cents per hour are to be 80 cents per hour; the minimum rating of 80 cents per hour is to be

85 cents per hour, and the minimum rating of 85 cents per hour is to be 90 cents per hour.

Section 3. Additional Parties. After this agreement has been signed as herein provided, additional employers and weavers may come under the terms of this agreement, provided such employers, and the local union affected and the weavers of such employers similarly designate their intention in writing to accept the provisions of this agreement. No additional employer shall become a party hereto until approved by the employers then parties to this agreement, and the employers shall have full power of expulsion of any employer. Such additional employers shall be subject to assessments and dues as provided by the employers who have signed theretofore, and in the event that such proposed assessments or dues are a true deterrent operating against the signing of this agreement by such additional employers, the Impartial Chairman shall have full powers to vary such assessments or dues.

Section 4. Expenses. All expenses in connection with the operation of the machinery of adjustment herein established shall be divided equally between the union and the employers, it being understood that the employers may apportion their share of the expense between the individual employers on such a basis as they may see fit, and that the union may likewise apportion its half of the expense among its members as it sees fit. The Impartial Chairman shall be empowered to assess and collect the necessary funds in accordance with the proposed budgets previously submitted by him and approved by the Trade Council. The custody and disbursements of all funds necessary for the operation of this agreement shall reside with the Impartial Chairman. Immediately upon the taking of office of the Impartial Chairman there shall be paid into the general fund the sum of Twenty-five hundred dollars (\$2,500) by the employers, and Twenty-five hundred dollars (\$2,500) by the Amalgamated Textile Workers of America, it being further understood that the total expense of conducting this machinery may approximate the sum of Fifteen thousand dollars (\$15,000) per annum.

Section 5. Impartial Chairman. There shall be selected by the signers to this agreement as soon after the signing of the

agreement as possible, a person agreed upon to serve as Impartial Chairman, who shall devote his full time and attention to the duties of this office. All complaints, disputes or grievances arising between the parties hereto in relation to wages and working conditions of weavers shall be submitted to the Impartial Chairman either on appeal as hereinafter provided or for determination in the first instance. The Impartial Chairman may lay down rules and regulations as to the manner and method in which matters may be brought before him and in such rules may provide that all complaints, disputes and grievances shall be submitted in writing, but in no event shall the Impartial Chairman make a ruling in relation to any matter before him until ample opportunity has been given for the introduction and rebuttal of evidence by all parties affected. All testimony taken before the Impartial Chairman shall be open to both sides and shall be properly recorded. In case of death, resignation or inability to act on the part of the Impartial Chairman, the Trade Council as hereinafter created, shall fill the vacancy. All pending matters shall be held in abeyance until the vacancy is filled. Full performance of all rules, regulations and orders laid down by the Impartial Chairman shall be obligatory on all parties to the agreement. The Impartial Chairman, in order to enforce fulfillment of the rules, regulations and orders laid down by him, is hereby empowered to impose fines for wilful disregard or disobedience to any of his rules, regulations or orders. Any fine so imposed on the union or weavers shall be paid into the general fund, but shall be credited on the account of the amounts to be paid to the general fund by the employers, and likewise any fines imposed and collected from one or more employers shall be paid into the general fund and credited to the amount to be collected from the union or the weavers. In the event that a weaver fails to pay the fine so imposed upon him, the local union and the national organization shall be liable for the payment of such fines, but no such fine imposed upon a weaver shall be less than \$2.00 or more than \$10.00 for each offense; in the case of a fine on the union or a union official as such the fine shall not be less than \$10.00 or more than \$50.00 for each offense; and in no event shall any fine imposed upon any employer be less than

\$10.00 or more than \$250.00 for each offense. In the event that an employer fails to pay any fine imposed upon him the other employers parties to this agreement agree to pay such fine. All rules, regulations and orders issued by the Impartial Chairman shall be in writing and shall be on file in his office and shall be accessible to all of the parties hereto and notice of all such rules, regulations, orders and fines shall be mailed to each of the employers and each local union. In arriving at any conclusion in regard to wages or working conditions, the Impartial Chairman must give due consideration to all of the conditions of employment existing in the industry at the time of the execution of this agreement or subsequent thereto, but no practice, or custom in existence in the industry shall be considered binding upon the Impartial Chairman.

Section 6. Trade Council. A Trade Council shall be created composed in the following manner: Each employer a party to this agreement shall have one representative on such Trade Council until such time as more than six employers are parties hereto, in which event the number of employers on the Trade Council shall not be increased beyond six and the method of selecting such six representatives shall be vested in the employers then parties hereto, but in no event shall there be more than one representative for any one concern. Additional representatives of the employers may sit in with the Trade Council and take part in all of its considerations, but having no vote in any matters that may come before the Trade Council. The Amalgamated Textile Workers of America, through the New York, Brooklyn and Queens Silk Ribbon Locals, shall designate a number of representatives equal to the number appointed to represent the employers as above provided, but in no event shall less than four of such appointees representing the union be persons actually employed as weavers in the plants of the employers parties to this agreement and no two of such appointees shall be weavers employed by the same employer. Additional representatives officials of the Amalgamated Textile Workers of American may sit in, but having no vote, but in the event that the employers have present at the Trade Council an attorney at law, the like privilege is granted to the union. The weavers' representatives designated by the Amalgamated

Textile Workers of America as above provided, shall be confirmed and approved by the weavers in the shops of the employers who are signers to this agreement. Each weaver designated as member of the Trade Council must be able to speak English and must have been employed in the shop he represents for a period of not less than one year. But in the event that no suitable representative can be selected who has been so employed for one year or more, the Impartial Chairman may reduce the period of qualification, but in no event to be less than a period of six (6) months. This council shall consider and discuss all matters of general trade policy and shall be presided over by the Impartial Chairman who shall have no vote. In the event that any matter brought before the Trade Council shall result in a unanimous agreement being reached between the representatives of the employers and the representatives of the weavers, the matter under consideration shall be reduced to writing and shall not be referred to the Impartial Chairman for further consideration and determination. In the event that no unanimous agreement is reached, all matters brought to the attention of the Trade Council shall be referred to the Impartial Chairman, who shall have full power to act in the premises. The trade council by unanimous vote shall select and employ the Impartial Chairman, shall approve the budgets and have full auditing power over all the funds. No action taken by the Trade Council shall be valid unless all of the representatives are present and voting. The Impartial Chairman shall call in the Trade Council in order to assist him in all matters involving questions of trade policy, but the Trade Council may waive this provision.

Section 7. Compensation of Weavers. a. The Impartial Chairman after a thorough investigation and study shall make a full report and issue rulings if found advisable, as to the basis and amount of compensation to be paid to weavers. Any such rulings of the Impartial Chairman in regard to compensation of weavers must provide for deductions of pay for any failure to accomplish fair production on the part of the individual weaver. Any such ruling or regulation shall be based upon the production records of the employers and such social and other conditions and facts as the Impartial Chairman may consider

elements in the situation. No ruling relating to the basis of compensation of weavers shall be ordered by the Impartial Chairman which permits decreased production or fails to guarantee fair production, and any ruling which results in decreased production shall be immediately revoked and rectified.

b. Within one month of the time when the Impartial Chairman will take office, he shall issue a preliminary report in connection with this matter and shall set forth such facts as he may find desirable.

c. The final report when issued shall set the date when change, if any, in the basis or amount of compensation shall become effective. It is understood that any such ruling shall be made effective as speedily as possible, but must allow ample time for necessary changes in system if any, which the rulings of the Impartial Chairman may make necessary. The Impartial Chairman, for the purposes of this inquiry and in any other matters that may come before him, shall have full and free access to the production records of the employers and the records of the unions and may, subject to limitations which might be imposed by the Trade Council, retain additional persons to assist him. Every wage scale shall be accompanied by a scale of production and shall not be increased or decreased, during the manufacturing season of the individual employers, it being understood that this provision shall not apply to new articles which shall be introduced during a manufacturing season. The Impartial Chairman is to immediately consider and issue rulings on the standardization and uniformity of the number and bases of ratings, taking into consideration the quality and kinds of goods produced in the individual shop and any other factors which may bear on the question.

Section 8. Shop Adjustments. All complaints, grievances or disputes arising in the shop of any employer which cannot be adjusted within the shop shall be referred to the Impartial Chairman.

Section 9. Strikes and Lockouts. It is agreed that there shall be no lockouts on the part of the employers or strike or stoppage on the part of the weavers for any reason whatsoever during the existence of this agreement.

Section 10. Hiring and Discharging. The full power of

hiring and discharge rests in the employers, but any weaver feeling aggrieved by his discharge may bring the matter before the Impartial Chairman providing he has been employed for more than two weeks, but the union does not hereby waive the right to appeal because of discharge based upon discrimination against the union. The Impartial Chairman shall have power to consider and make rulings as to the justification for the discharge of a weaver by the employer and the stopping of work by a weaver. In the event that a weaver stops work or fails to appear for work for reasons which the Impartial Chairman finds insufficient, such weaver may be ordered deprived by the Impartial Chairman of his membership in the union and such weaver and the Amalgamated Textile Workers of America or the local union shall be subject to such penalties as may be imposed by the Impartial Chairman. In the event that a weaver has been discharged by the employer for reasons which the Impartial Chairman shall find insufficient, the employer must abide by the ruling of the Impartial Chairman and shall be subject to such penalties as the Impartial Charman may impose, and the Impartial Chairman may allow in a case of an immediate appeal by a weaver, if such appeal is found justified, the pay necessarily lost by the weaver in the diligent prosecution of such appeal.

Section 11. Variations in Compensation. Compensation of all weavers, whether members of the Amalgamated Textile Workers of America or not, as ordered by rulings of the Impartial Chairman, shall not be increased or decreased in any way by the employers, and no presents, bonuses or gratuities in any form whatsoever may be given to any weaver by any employer without the consent of the Impartial Chairman.

Section 12. Preferential Shop. It is agreed that the principle of the preferential shop shall prevail, and that preference shall be given to weavers of the Amalgamated Textile Workers of America, in hiring, discharge and distribution of work. Whenever an employer needs additional weavers he shall first make application to the union, specifying the number and kind of weavers needed. The union shall be given 48 hours to supply the specified help and if it is unable or for any reason fails to furnish the required weavers to the satisfaction of the employer

the employer shall be at liberty to secure them elsewhere. The Impartial Chairman may issue rulings extending this period of time, but in no event beyond one week. If the requests for weavers exceeds the number which the union can supply, there shall be no partiality or favoritism exercised in the apportionment of such weavers among the employers. The principles of preference shall be similarly applied in the case of discharge. Should it at any time become necessary to reduce the force, the first ones to be dismissed shall be those who are not members of the union of good and regular standing, but not previous to the running down of their warps. It is understood that the Impartial Chairman shall have power to discipline an employer who distributes work with the intention of discriminating against union weavers, and to order the discharge of an employee not a member of the union who endeavors to undermine the union, and to discipline a member of the union who endeavors to undermine the employment of a non-union employee. No weaver, however, shall be employed who was previously a member of Amalgamated Textile Workers of America and subject to discipline under its rules until he has been reinstated in good standing. If the initiation fees, assessments, or penalties imposed by the union deter weavers from joining the union, the Impartial Chairman shall have full power to order the variation of the amounts and the dates of payment of such initiation fees, assessments or penalties.

IN WITNESS WHEREOF, the parties hereto have signed and executed this agreement as provided under Section 1 hereof, this 10th day of April, in the year One thousand nine hundred and twenty.

CERTIFICATE OF VOTE

AMALGAMATED TEXTILE WORKERS OF AMERICA,
31 Union Square, Room 707

NEW YORK, April 9th, 1920.

To Whom It May Concern:

It is hereby stated, that in a mass meeting of the combined locals of New York, Brooklyn and Queens of the Amalgamated Textile Workers of America, held on April 9th, 1920, a secret

vote has been taken on the new proposition and the Collective Bargaining agreement of the manufacturers concerned, to the effect, that the agreement has been favorably accepted with a vote of 292 for and 27 against it.

Respectfully,
H. FISCHER, *Secretary of Mass Meeting.*

**Agreement—Cleveland Garment Manufacturers' Association
and International Ladies' Garment Workers Union**

Williston, Sections 1654-1656.

In view of their primary responsibility to the consuming public, workers and owners are jointly and separately responsible for the cost and quality of the service rendered, it is agreed that co-operation and mutual helpfulness are the basis of right and progressive industrial relations and that, intimidation and coercion have no proper place in American industry. To provide a means whereby the parties may co-operate, both to preserve peace in the industry and to further their mutual interests in the common enterprise, this agreement is entered into between

THE CLEVELAND GARMENT MANUFACTURERS ASSOCIATION on behalf of those of its members whose signatures are attached hereto,

THE INTERNATIONAL LADIES' GARMENT WORKERS UNION AND LOCALS Nos. 26, 27, 39, 37, 42, 94 on behalf of their members and

The Hon. Julian W. Mack, Samuel J. Rosensohn and John R. McLane, or their successors, acting as a *Board of Referees*.¹

I

The parties accept as a part of this agreement, and incorporate therein, except as they may be inconsistent with the express provisions of this agreement, the principles affirmed in the agreement between the parties and the Secretary of War, bearing date of August 12th, 1918, and in the awards and decisions made by the Board of Referees appointed thereunder.

¹ Sub-divisions of paragraphs have been lettered for convenience.

II

a. There shall be a permanent Board of Referees of three persons, consisting of the Honorable Julian W. Mack, Chairman; Samuel J. Rosensohn, and John R. McLane. This Board shall have power to (1) adjust matters which cannot be settled between the parties, (2) to establish periodic wage-scales for the industry, and (3) to see that this agreement is fairly lived up to by the parties hereto.

b. Vacancies in the Board, from resignation or otherwise, shall be filled, so far as possible, by the whole Board before such resignation becomes effective, or by the remaining Referees, after consultation in either case, with the other two parties to this agreement. Any one member of the Board shall have the authority to exercise the powers of the full Board except in case of a dispute wherein either party requests the consideration of the full Board.

III

On or about October first of each year, the Referees shall take up the matter of wage-scales, and on or about November first shall make such changes in the then-existing scale as shall, in their judgment, seem advisable. The wage-scale thus promulgated by them shall be effective at a time to be fixed by the Referees, which shall not be prior to December first of that year, and shall be the scale in force for the year next ensuing, except that four months thereafter, the subject may be reopened for the purpose of making adjustments in conformity with changes in the cost of living, which adjustment shall be made on or about April 1st, and become effective at a date to be fixed by the Referees which date shall not be prior to May first; provided, however, that the scale adopted for the year 1920 shall be effective as of January first of that year, and that there shall be no changes in that scale before December first, 1920.

IV

a. The wage-scale shall be determined after thorough investigation of all ascertainable facts, with due regard to the public

interest, fair and equitable wages conforming to American standards, and to the progress and prosperity of the industry. A united effort shall be made to promote all interests by increasing continuity of employment.

V

b. Disputes between an employer and an employee in an individual shop, affecting a member of the Union, shall first be taken up between the employer or his representative and the worker concerned or his representative, who must be an employee of such shop, for the purpose of adjusting the differences between them. In case of failure to make satisfactory adjustment, the matter shall then be taken up by the Manager of the Union and the Manager of the Manufacturers' Association.

c. Disputes of a general nature concerning such matters as hours of work, general sanitary standards, general wage-scales and classifications in connection therewith, and so forth, shall be taken up directly by the Manager of the Union and the Manager of the Manufacturers' Association.

d. If they fail in either case to make a satisfactory adjustment, the dispute shall then be arbitrated by the representative of the Referees appointed for that purpose and vested with the full power of the Board of Referees, subject only to a right of appeal to the Board from his decision on matters relating to principle or policy. This representative shall reside in Cleveland, and may be called upon at any time for the investigation or hearing of cases properly brought before him. No case shall be heard by him, or by the Board, which has not first been taken up in the successive steps set forth above. The decision of the representative is final unless and until overruled or modified by the Board of Referees except where a member of the Board, upon cause shown, shall deem it advisable to suspend execution of the decision of the representative, pending appeal.

VI

The principle of week work is approved. The definite arrangements which shall be worked out jointly under the

decision of the Referees during the next year, shall have due regard to the productive value of the individual worker, based on fair and accurate standards.

VII

The Manufacturers' Association and the Union shall cooperate as required by the Referees in seeing that all of their decisions, rulings, promulgations, or disciplinary measures, are faithfully executed or complied with.

VIII

Every worker shall work for, be paid by, and bargain with the firm in whose shop he is employed, and not by any other employee of that firm. This clause relates to the abolishment of inside sub-contracting.

IX

a. All workers in outside shops located in Cuyahoga County shall receive the same scale of wages as established by the Referees for the workers in the inside shops. No employer of the Association shall knowingly continue to give work to any such outside shop which does not maintain this scale, or which otherwise fails to abide by any awards, rulings, or decisions of the Referees or which shall refuse to submit a dispute to the Referees or their representative.

b. The representative of the Referees may hear any complaint as to such shops or contractors, and where he finds that the standard is not being lived up to in any such outside shop, he may forbid the letting of any further contracts by any of the manufacturers to such outside contractor until the contractor shall have paid up all the back pay owing under the Referees' wage-scale, or have made such other restitution as may be necessary to bring him into line with the aforesaid standards.

c. The Referees shall have authority to decide any complaint with respect to any shop in the vicinity of Cleveland doing work for any Manufacturer, party to this agreement, giving

due consideration to the proper interests of the parties to this agreement.

X

A Joint Board of Sanitary Control may be created by the Referees.

XI

a. This agreement shall be so administered that the position of neither of the parties to it shall be intentionally weakened. On the contrary, it is expressly understood that each party shall assist so far as possible in maintaining the integrity of the other.

b. Any member of either group guilty of violating this agreement shall be disciplined on order of the Referees.

XII

During the slack periods, the work shall be distributed among all the workers of a given shop, or of a given division of that shop, as equitably as possible.

XIII

This Agreement shall remain in force until December 31st, 1921, and shall be automatically renewed for another year, and so on for each succeeding year, subject only to the right of either party to terminate it on December 31st, 1921, or on December 31st, of any succeeding year, by giving written notice at least three months before the end of such year. Either party may, upon similar notice, at such periods, suggest amendments or a reconsideration of the terms of the Agreement as a whole, in which case the Referees shall call the parties into conference during the three months' period, and whatever changes may be agreed on, shall become effective at the beginning of the next yearly period.

XIV

There shall be no strikes or lockouts during the life of this Agreement, unless previously authorized by the Referees.

XV

The expenses of the Referees and their representative in administering this Agreement shall be borne equally by the Union and the Manufacturers' Association by making such deposits to the order of the Referees as from time to time may be required by them.

December 18th, 1919.

**Agreement between The Associated Clothing Manufacturers
and The Amalgamated Clothing Workers of America**

Williston, Sections 1654-1656.

Whereas the parties hereto desire to enter into an agreement for the following purposes:—

- (a) To operate preferential Union Shops;
- (b) To adopt the principle of collective bargaining;
- (c) To submit to arbitration in case of disputes;
- (d) For promoting the best interests of the clothing industry;
- (e) For the creation and maintenance of friendly and harmonious relations, co-operation and good will, between employers and employees;
- (f) For fixing and adjusting wages and working hours;
- (g) For the prevention of strikes, stoppages of work, lock-outs, etc.;
- (h) For the amicable settlement of all grievances, controversies, and disputes which might arise between both parties;
- (i) For the maintenance of high order of discipline and efficiency, by the willing co-operation of the union and workers;
- (j) For the maintenance of good standards of workmanship and conduct;
- (k) For the assurance of proper quantity, quality and cost of production.

IT IS HEREBY AGREED:—

(1) That this agreement shall be effective from the date of ratification by both parties and shall continue in force until

June 1st, 1920; and from year to year thereafter unless notice shall be given in writing by either party to the other intimating amendment or abrogation, within 30 days prior to June 1st.

(2) That during the life of this agreement there shall be no lock-outs, strikes or stoppages of work either in the factory or in any section thereof concerning any matter in controversy or any grievance of any kind whatsoever.

(3) That forty-four hours will constitute a week's work in the shops of the members of the ASSOCIATED CLOTHING MANUFACTURERS, with the exception of the House of Hobberlin, where forty hours will constitute a week's work.

(4) That overtime shall be dispensed with as far as possible, but when overtime is necessary in a department or section of department, the employees engaged shall be paid at the rate of time and one-half. Double time will be paid for work done on legal federal holidays.

(5) That, recognizing the necessity for providing reasonable methods for deciding controversies or grievances, both parties agree to the appointment of a Board of Arbitration, to be selected as follows:—

Two representing the manufacturers.

Two representing the union.

One to be selected by the arbiters so chosen.

(6) That the expenses incidental to the Board of Arbitration shall be borne equally by the parties to this agreement.

(7) That the decision of the Board of Arbitration or a majority thereof shall be final and binding upon both parties.

(8) That any employee feeling himself aggrieved shall present his complaint to the shop steward, who shall take the matter up for adjustment with the shop superintendent. In the event that they are not able to agree, the shop steward shall report the matter to a representative of the union, who in turn shall take the matter up with a representative of the employer. In event that these two are unable to agree on an adjustment, the grievance shall then be presented to the Board of Arbitration within three days.

In order that the presentation and adjustment of these grievances cause as little confusion as possible, it is hereby agreed that the time for presenting grievances to the shop

steward and by him to the shop superintendent, and for the adjustment of these grievances, shall be after the regular working hours, which end at 5 P. M. on week days and 12 o'clock on Saturdays. Exception is made, however, in such emergency cases as require immediate action.

(9) That the members of the Associated Clothing Manufacturers agree to operate preferential Union Shops. When additional workers are needed, application will be made to the union. If the union is unable, within forty-eight hours, to supply such satisfactory workers as are needed, the manufacturers shall then be privileged to secure such workers as they can. Non-union workers who are employed under this provision are subject to joining the union within a reasonable time.

(10) That in the case of new workers being employed, two weeks will be considered a probationary period, if the new workers are regularly employed in the trade. In case of apprentices or workers taken from other trades, the probationary period will be four weeks.

(11) That it is understood that the power of discharge will be exercised by the employers with justice and with due regard for the reasonable rights of the employees. If an employee feels that he has been unjustly discharged, he may appeal to the Board of Arbitration which shall have the power to review and decide such cases. By request of the union representatives, the discharge shall be delayed until the Board of Arbitration hears the case.

(12) That whenever an employee shall absent himself from work without giving an acceptable reason to the employer, upon the second business day of his absence, the employer may consider his position forfeited. In case of absence, a reason therefor must be promptly given to the foreman or company representative by messenger, mail or telephone.

(13) That workers who are absent on account of sickness shall be reinstated in their former positions within a reasonable time if proper notification is given to the Company.

(14) That changes of workers from one operation or department to another may be made by the employer, provided that the individual worker does not suffer through such changes.

(15) That on or about January 15th and July 15th of each year representatives of the ASSOCIATED CLOTHING MANUFACTURERS and representatives of the Union shall meet to determine the wage scale, which is to apply in the shops of the ASSOCIATED CLOTHING MANUFACTURERS as specified below. This scale of wages shall remain in force and effective until adjusted as prescribed below. The wage-scale is to be determined in conference within one month after the meeting and it is to be ready for publication on February 15th and August 15th of each year. In view of the nature of the wholesale clothing trade which makes it necessary for the manufacturers to price their goods and sell them at a considerable period before they are put into manufacture, it is hereby agreed that the scale of wages which is thus determined on or before February 15th, shall become effective on June 1st following, and remain in force until November 30th, following.

The wage scale determined on or before August 15th shall become effective on December 1st following and remain in force until May 31st of the next year.

It is expressly provided that the wage scale committee, which will consist of an equal number of representatives of the ASSOCIATED CLOTHING MANUFACTURERS and the Amalgamated Clothing Workers of America, appointed by these respective bodies, shall meet to determine the wage scale which shall be effective until May 31st, 1920. One-half of the increase determined by this new wage scale shall apply from September 1st, 1919, and the full amount shall apply from November 1st, 1919. In case this scale should not be determined until some date later than the dates specified above, it will, when determined, be retroactive to those dates in the proportions specified. In case of a disagreement in the determination of the wage scale, the matter is to be referred to the Board of Arbitration.

(16) That, the matter of regulating the outside contract shops is to be left to the Board of Arbitration with the following recommendations:—

- (1) That outside contract shops be regulated so as to comply with the health regulations of the city and the province.

(2) That a committee composed of representatives of the union and representatives of the employers in equal numbers, be appointed to investigate and regulate the outside contract shops.

(3) Should they be unable to agree, the matter will be referred to the Board of Arbitration for adjustment.

(17) That it is agreed by the union that the manufacturers shall have the right to take into its employ as many returned soldiers as it can absorb and that it shall have the privilege of developing workers through the apprenticeship system on a basis to be determined by the representatives of the manufacturers and the union. In the event of disagreement, then it shall be submitted to the Board of Arbitration for decision.

(18) That the Union agrees that where the employee acts unfairly with the employer that he or she will be disciplined by the Union.

(19) That the union agrees that it will bend its energies to enforce maximum production and that it will furnish to the Board of Arbitration, scales of production considered to be fair and equitable.

Toronto, August 21st, 1919.

Agreement Between Henry Sonneborne & Co., Inc., and the Amalgamated Clothing Workers of America

Agreement entered into by Henry Sonneborne & Co., Inc., and the Amalgamated Clothing Workers of America, through its national president and a committee representing the employees of Henry Sonneborne & Co., Inc.

1. Overtime shall be dispensed with so far as possible. Wherever a department or section of a department works overtime the employee shall be paid at the rate of time and one-half for such overtime; in the case of piece workers they shall be paid on the basis of piece rates and one-half for such overtime.

2. Requests for increases shall be taken up in the first instance by the shop chairman elected by the employees of Henry Sonneborne & Co., Inc.; in case of disagreement the matter in dispute shall be referred to the Trade Board as here-

inafter provided for. The Trade Board shall make inquiry into the case for such request and shall have power to render a decision.

3. The Trade Board shall be composed of eight representatives elected by the employees of Henry Sonneborne & Co., Inc., members of the Amalgamated Clothing Workers of America, and eight representatives appointed by Henry Sonneborne & Co., Inc., and an Impartial Chairman chosen by mutual agreement of both parties. All complaints that may arise in the shop shall be referred to the Trade Board. Decisions made by the Trade Board may be appealed to the Board of Arbitration as hereinafter provided for.

4. The Board of Arbitration shall be composed of three members, one representing the firm of Henry Sonneborne & Co., Inc., one representing the Amalgamated Clothing Workers of America, and the third chosen by mutual agreement to act as Impartial Chairman. Appeals may be made from the Trade Board to the Board of Arbitration. All decisions rendered by the Board of Arbitration shall be final and binding upon both parties to this agreement.

5. It is mutually agreed that complaints affecting wages for "S" work shall be treated separately by the other departments from the Trade Board.

6. It is mutually agreed that all work will be given to the inside shops. If at any time during the life of this agreement it is found that the workers are unable to meet the demands of output in any season or are unable to assure prompt delivery through any increase of business for that season, the firm shall have the right to place extra work in outside shops in order that undue injury, through the cancellation of orders, may be prevented. It is understood, however, that the representatives or agents of the firm having charge of the giving out of such work, shall give preference to outside shops whose workers are members of the Amalgamated Clothing Workers of America. It is further understood that if without undue delay all of such work cannot be placed in such shops, the firm shall have the right to place such work wherever it can be most satisfactorily and speedily handled.

7. Regarding all new help it will be the duty of the employ-

ment bureau to ascertain weekly the records of the new workers and establish within three weeks whether the employee is doing satisfactory work. If it is found that the worker is not satisfactory he may be dismissed at the end of three weeks' probationary.

8. Changes in method of production as well as changes of persons from one operation or department to another may be made by the corporation, so long as the individual worker does not suffer through changes. In every case the Shop Chairman shall be notified before such change.

9. All persons employed directly in the manufacture of clothing in the Cutting, Trimming and Tailoring Departments of Henry Sonneborne & Co., Inc., shall be members of the Amalgamated Clothing Workers of America in good standing.

10. It is understood that the power of discipline and discharge shall remain with the corporation and its agents. It is agreed, however, that at the request of the Shop Chairman, the employee shall remain at work until the Trade Board reviews the case.

11. Whenever an employee shall have absented himself from his accustomed place without giving an acceptable reason, the firm or other officers in charge of his work, or to the shop representative or the foreman of his floor, upon the second business day of his absence a reason therefor must be given the foreman and shop representative by messenger, mail or telephone. Any workers who are absent on account of sickness shall be reinstated in their former position if proper notification is given the foreman and shop chairman within three days. Their former positions shall be given to them if they return within a reasonable time.

12. Standards are to be established by a committee who shall be composed of three representatives of the workers and three representatives of Henry Sonneborne & Co., Inc.; in the event of this agreement the matter in dispute shall be referred to the Trade Board, the work in question shall proceed on the basis of the committee's decision.

13. This agreement to go into effect on January 3, 1919, and shall continue in force until January 3, 1921.

14. It is expressly agreed that Dr. Frank K. Goodnow,

Pres. of the Johns Hopkins University, shall continue as Impartial Chairman of the Board of Arbitration.

15. It is expressly agreed that Jacob M. Moses shall continue as Chairman of the Trade Board.

Strouse & Bros., Inc., and the Amalgamated Clothing Workers of America—Labor Agreement

Agreement entered into by Strouse & Bros., a corporation, and the Amalgamated Clothing Workers of America, through its National President, and a Committee representing the employees of this corporation:

(1) Forty-four (44) hours shall constitute a week's work in the cutting, trimming, coat, trousers and vest shops.

(2) Overtime shall be dispensed with so far as possible. Whenever a department or section of a department works overtime the employees shall be paid at the rate of time and half for such overtime. In the case of piece-workers, they shall be paid on the basis of piece rate and a half, for such overtime.

(3) Requests for increases shall be taken up in the first instance, by the shop committee, elected by the employees of Strouse & Bros., Inc., and the properly appointed representatives of Strouse & Bros., Inc. In case of disagreement, the matter in dispute shall be referred to The Wage Board, as hereinafter provided for. The Wage Board shall make inquiry into the cause for such requests, and shall have the power to render a decision. All decisions made by the Wage Board, however, may be appealed to The Board of Arbitration, as hereinafter provided for.

(4) The Wage Board shall be composed of three members appointed by Strouse & Bros., Inc., and three employees of Strouse & Bros., Inc., members of the Amalgamated Clothing Workers of America. The Chairman of the Trade Board shall act as Chairman of the Wage Board, when called upon.

(5) The Trade Board shall be composed of seven (7) representatives elected by the employees of Strouse & Bros., Inc., members of the Amalgamated Clothing Workers of America, and seven representatives appointed by Strouse & Bros., Inc., and an impartial chairman chosen by mutual agreement of

both parties. All complaints except those directly dealing with wages, shall be referred to the Trade Board.

(6) The Board of Arbitration shall be composed of three (3) members, one representative of Strouse & Bros., Inc., one representative of the Amalgamated Clothing Workers of America, and the third chosen by mutual agreement, to act as impartial chairman. Appeals may be made through the Trade Board, or the Wage Board, to the Board of Arbitration. The decisions rendered by the Board of Arbitration shall be absolutely final and binding upon both parties to this agreement, throughout the life of the agreement.

(7) It is mutually agreed that complaints affecting wages for "S" work shall be treated separately from the other departments by the Wage Board.

(8) It is mutually agreed that all work will be given to the inside shops, if at any time during the life of this agreement, it is found that the workers are unable to meet the demands of output in any one season, or are unable to assure prompt delivery through an increase of business for that season, the corporation shall have the right to place extra work in outside shops, in order that undue injury through the cancellation of orders may be prevented. It is understood, however, that the representatives or agents of this corporation, having charge of giving out such work, shall give preference to outside shops whose workers are members of the Amalgamated Clothing Workers of America. It is further understood that if, without undue delay, all such work cannot be placed in such shops, the corporation shall have the right to place such work wherever it can be most satisfactorily and speedily handled, but in no case shall this action be taken until the shop-chairman has been notified and if mutual agreement is not reached, it shall be referred to the Trade Board in the usual way.

(9) When employing permanent hands, six (6) working days shall be considered a probationary period, and after this period, if the employee so engaged, is doing satisfactory work he or she shall be known as one of the regular force.

All help so engaged must be members of the Amalgamated Clothing Workers of America. Should the Amalgamated Clothing Workers of America not be able to furnish employees

to Strouse & Bros., Inc., within three days the corporation shall have the privilege to secure such employees in the open market providing that they become members of the Amalgamated Clothing Workers of America before commencing work.

(10) Changes in methods of production, as well as changes of persons from one operation or department to another, may be made by the corporation so long as the individual worker does not suffer through such changes. In every case, the shop chairman shall be notified before such change is made.

(11) All persons who may be employed directly in the manufacture of clothing, in the cutting, making, trimming and tailoring departments of Strouse & Bros., Inc., shall be members of the Amalgamated Clothing Workers of America, and in good standing, except, that trimmers who are not now members of the Amalgamated Clothing Workers of America and working for Strouse & Bros., Inc., shall not be compelled to join the Amalgamated Clothing Workers of America.

(12) It is understood that the full power of discipline and discharge, lies with the corporation and its agents, but it is agreed that this power shall be exercised with justice and with due regard for the reasonable rights of the employees. If an employee feels that he has been unjustly discharged, he may appeal through his shop chairman to the Trade Board, which shall have the power to review and decide such cases. In every case, the shop chairman shall be notified before actual discharge. By request of the shop chairman the discharge shall be delayed until the Trade Board hears the case.

(13) Whenever an employees shall have absented himself from his accustomed place, without giving an acceptable reason to the Corporation, or their officer in charge of this work, or to the shop representative of the union or the deputy of the firm on his floor, upon the third business day of his absence, the corporation may consider his position forfeited. In case of absence, a reason therefor must be given to the foreman or shop representative and if on account of sickness, the employees shall be reinstated in their former positions within reasonable time, if proper notification is given the foreman or deputy, within three days.

(14) This agreement shall go into effect July 1st, 1919, and shall continue in force until July 1st, 1921.

(15) It is expressly agreed that should at any time, an appeal be made to the Board of Arbitration, that an impartial Chairman shall be first selected by mutual agreement between Mr. Eli Strouse, President of Strouse & Bros., Inc., and Mr. Sidney Hillman, President of the Amalgamated Clothing Workers of America.

(16) It is expressly agreed that Jacob M. Moses, ex-judge of the Juvenile Court shall preside as Chairman of the Trade Board.

Agreement—Clothing Exchange of Rochester and Amalgamated Clothing Workers of America.

Entered into between the Clothing Exchange of Rochester, represented by Mr. Max Holtz and Mr. Samuel Weil, and the Amalgamated Clothing Workers of America, represented by Mr. Sidney Hillman.

THE OPEN SHOP

1. The union concedes and recognizes the right of the manufacturers to operate their plants on the so-called "open shop" principle.

COLLECTIVE BARGAINING

2. The employees recognize the right of their employees to bargain collectively. This shall carry with it the following:

(a) The right of employees to organize and belong to outside organizations.

(b) The right of the employee or group of employees to elect their own representatives, who shall in turn have the right to act as counsel for such employees, as later prescribed.

METHOD OF HANDLING GRIEVANCES UNDER THIS COLLECTIVE BARGAINING PLAN.

3. (a) Individuals or groups of workers have the right to present their complaints direct to the firm's labor manager.

(b) Individuals or groups may present their complaints through their representatives which may be either the group representative or shop chairman according to the wishes of the workers directly involved.

3. The aggrieved workers shall have the right to call in as their spokesman a third party who himself need not be an employee of the firm.

1. Such outsider shall be permitted to enter into the con-

trovcrsy only after settlement has been attempted on the inside between the firm and the workers (or the workers' inside representatives).

2. Where no such settlement is reached, then the workers may call in the representative who need not be an employec of the firm at such time and such place as is agreed upon between the workers and the firm.

Where time and place cannot be agreed upon between the workers and the firm, the place shall be the arbitrator's office, and the time set by the arbitrator, if the time cannot be agreed upon between the parties.

3. The firm has the same right to call into the conference or controversy such outsiders, under the same conditions laid down for the workers.

ARBITRATION SCHEDULE

4. Both parties agree to arbitration as a model of settling disputes. There shall be no stoppages of work because of disputes or dissatisfaction. The award of the arbitrators shall be final and binding on both parties. Procedure in arbitration shall be as follows:

(a) All matters which cannot be settled within the plant, as between the firm and the workers, after calling in the shop chairman or the outside representative, or both, as heretofore provided for, shall be referred to arbitration for final adjudication.

(b) Either party may bring the matter to arbitration at any time within thirty days after failure to reach an agreement.

(c) Employers and workers have the right to be represented by their outside representatives before the arbitrator.

(d) The employers shall have the right to refuse employment to such of their workers who do not abide by the award of the arbitrator.

(e) The arbitrator shall be chosen by both parties to this agreement.

5. The forty-four hour shall go into effect April 1, 1919.

6. The matter of wages shall be the subject of a conference before April 1st between Mr. Hillman and Mr. Holtz. In the

event of a failure to agree it shall be subject to arbitration as provided in this agreement.

7. This agreement shall run until May 1, 1920.

N. Y. Clothing Trade Association

PREAMBLE

The parties hereto enter into an agreement for collective bargaining with the intention of agreeing on wage and working conditions and to provide a method for adjusting all differences that may arise during the term of this agreement.

On the part of the employer, it is the expectation and intention that this agreement will result in the establishment and maintenance of a high order of discipline and efficiency by the willing coöperation of union workers; that by the exercise of this discipline, all stoppage and interruptions will cease; that good standards of workmanship and conduct will be maintained and a proper quantity, quality and cost of production will be assured; that coöperation and good will will be established between the parties hereto.

On the part of the union, it is the intention and expectation that this agreement will operate in such a way as to maintain and strengthen its organization so that it may be strong enough to coöperate, as contemplated in this agreement, and to command the respect of the employer; that they will have recourse to a tribunal in the creation of which their votes will have equal weight with that of the employer in which all of their grievances, including those concerning wages and working conditions, may be heard and all of their claims adjudicated.

I

This agreement is entered into between the New York Clothing Trades Association and the Amalgamated Clothing Workers of America, and is effective from August 27, 1919, to August 26, 1920.

II

HOURS OF WORK

A. The hours of work shall be forty-four per week, to be worked eight hours on week days, with a Saturday half holiday.

B. OVERTIME. For work done in excess of the regular hours per day, overtime shall be paid to piece workers of fifty per cent, in addition to their piece work rates; to week workers, at the rate of time and a half.

III

WAGES

If there shall be a general change in wages in the clothing industry, during the life of this agreement, which will be sufficiently permanent to warrant the belief that the change is not temporary, the board of arbitration herein provided for, shall have power to determine whether such change is of so extraordinary nature as to justify a consideration of the question of making a change in the present agreement, and if so, then the board shall have power to make such changes in wages as in its judgment shall be proper.

IV

PREFERENCE

A. It is agreed that the principle of the preferential shop shall prevail, to be applied in the following manner:

Preference shall be applied in hiring and discharge.

Whenever the employer needs additional workers, he shall first make application to the union, specifying the number and kind of workers needed.

The union shall be given a reasonable time to supply the number of workers required, and if unable, for any reason, to furnish them, the employer shall be at liberty to secure them in the open market as best he can.

In the like manner, the principle of preference shall be applied in the case of discharge.

Should it at any time become necessary to reduce the number of employees, the first ones to be dismissed shall be those who are not members of the union.

B. The provisions for preference made herein, require that the door of the union be kept open for the reception of non-union workers. Initiation fee and dues must be maintained at a reasonable rate and any applicant must be admitted who is not an offender against the union and who is eligible for membership under its rules, provided that if any rules be passed that impose unreasonable hardships, or that operate to bar desirable persons, the matter may be brought before the tribunal herein provided for, for such remedy as it may deem advisable.

V

WORKING CONDITIONS

A. The full power to discharge and discipline remains with the employer, but it is understood that the power should be exercised with justice and with regard to the reasonable rights of the employees and if any employee feels that he has been unjustly discharged, he may appeal to the tribunal provided for, which shall have the power to review the case, and its decision shall be binding on the parties.

B. There shall be no stoppages of work, and if a stoppage shall occur because the person in charge shall have refused to allow the employees to continue work, he shall be ordered to immediately give work to the employees, or in case the employees have stopped work, the representatives of the employees shall order the employees to immediately return to work, and in case they fail to do so within one hour after being ordered, the employees concerned shall be considered as having left their positions and shall not be entitled to the benefit of this agreement.

C. During the slack season, the work shall be divided as nearly as practicable among all employees.

VI

ADMINISTRATION

The administration of this agreement is vested in a board of arbitration and a trade board, together with such officials and representatives of the parties hereto as may be found necessary.

A. The board of arbitration shall have full and final jurisdiction over all matters arising under this agreement and its decision thereupon shall be conclusive. It will concern itself mainly with questions of principle, and the application of this agreement to new questions as they arise and it shall have the power to review the decisions of the trade board. It shall consist of three members, one of whom shall be chosen by the union, one by the employer and a third shall be the mutual choice of both parties hereto, who shall be the chairman of the board.

It shall be the duty of the board of arbitration to investigate all matters that are brought before it.

B. The trade board is the board for adjusting all complaints and grievances and shall have original jurisdiction over all matters arising under this agreement and the decisions relating thereto and shall consider and dispose of all such matters when brought before it subject to rules of practice and procedure to be hereafter established.

The board shall consist of not more than eleven members, all of whom, except the chairman, shall be employees of the company. The company and the union shall be equally represented in numbers and it is understood that these members shall be selected in such a manner as to be representative of the various departments.

The chairman of the board shall represent the mutual interests of both parties; shall assist in the investigation of complaints; shall endeavor to mediate conflicting interests and in case of disagreement shall cast the deciding vote on all questions before the board. The chairman of the trade board shall be the mutual choice of both parties hereto.

VII

COMPLAINTS AND GRIEVANCES

Any employee feeling himself aggrieved, shall present his complaint in the first instance to the shop chairman, who should take the matter up for adjustment with the shop superintendent. In the event that they are not able to agree, the shop chairman shall report the matter to the representatives of the union, who in turn may take the matter up with the employers' labor manager. In the event these two are unable to agree on an adjustment of the matter, the matter shall then be presented to the trade board for its decision.

IN WITNESS WHEREOF the parties hereto have caused this to be signed by their respective authorized officers and representatives this.....day of.....A. D., 1919.

Dec. 13, 1919.

THIS AGREEMENT made and entered into this thirteenth day of December, nineteen hundred, by and between Luther C. White, in behalf of the Clothing Manufacturers' Association of Boston, and Samuel Zorn, Business Manager of the Amalgamated Clothing Workers of Boston, witnesseth:—

THAT THE PRESENT AGREEMENT between the manufacturers and the Amalgamated remains in full force until supplanted by another agreement, which shall incorporate therein the questions covered by the agreement of nineteen hundred and seventeen, and in addition thereto clauses stipulating that in consideration of certain raises made and promised by the Association to the Amalgamated of five dollars (\$5.00) per week to each worker, beginning December 1st, 1919, no further increase shall be demanded or requested collectively or individually by the Amalgamated Clothing Workers of Boston until the expiration of the coming light-weight season (or, until June 1st, 1920).

IT IS ALSO AGREED that the Office of the Joint Board of the Amalgamated and the Office of the Employment Manager of the Association shall coöperate in any way possible in the judgment of the said Samuel Zorn and said Luther C. White to prevent unauthorized and uncalled for requests of individ-

uals, sections or shops for raises in pay, inexperienced workers, excepted.

IT IS FURTHER AGREED that immediate action be taken by the parties hereto to choose an impartial chairman for this market, satisfactory to both, and that his name shall be incorporated in the new agreement when drawn and made ready for signature on or before December 23rd, 1919.

AS TO THE SCHEDULE IT IS FURTHER AGREED that a joint committee of four (4) be appointed by the Association and the Amalgamated to investigate wages paid in all shops in Boston, controlled by the Association, and make reports to both the Association and the Amalgamated.

IN WITNESS WHEREOF we have hereunto signed our names this thirteenth day of December, nineteen hundred and nineteen.

Protocol Agreement between Cloak, Suit and Skirt Manufacturers' Protective Association and Various Labor Unions

Williston, Sections 1654-1656.

Protocol of an agreement entered into this 2nd day of September, 1910, between the Cloak, Suit and Skirt Manufacturers' Protective Association, herein called the manufacturers, and the following locals of the International Ladies' Garment Workers' Union, namely: Cloak Operators' Union No. 1, Cloak and Suit Tailors' No. 9, Amalgamated Ladies' Garment Cutters' Association No. 10, Cloak and Skirt Makers' Union of Brownsville No. 11, New York Reefer Makers' Union No. 17, Skirt Makers' Union No. 23, Cloak and Skirt Pressers' Union No. 35, Buttonhole Makers' Union of New York (Local No. 64), Cloak and Suit Pressers of Brownsville No. 68, hereinafter called the unions.

Whereas differences have arisen between the manufacturers and their employees who are members of the unions with regard to various matters which have resulted in a strike, and it is now desired by the parties hereto to terminate said strike and to arrive at an understanding with regard to the future relations between the manufacturers and their employees, it is therefore stipulated as follows:

First. So far as practicable, and by December 31, 1910, electric power be installed for the operation of machines, and that no charge for power be made against any of the employees of the manufacturers.

Second. No charge shall be made against any employee of the manufacturers for material except in the event of the negligence or wrongful act of the employee resulting in loss or injury to the employer.

Third. A uniform deposit system, with uniform deposit receipts, shall be adopted by the manufacturers, and the manufacturers will adopt rules and regulations for enforcing the prompt return of all deposits to employees entitled thereto. The amount of deposit shall be \$1.

Fourth. No work shall be given to or taken to employees to be performed at their homes.

Fifth. In the future there shall be no time contracts with individual shop employees, except foremen, designers, and pattern graders.

Sixth. The manufacturers will discipline any member thereof proven guilty of unfair discrimination among his employees.

Seventh. Employees shall not be required to work during the ten legal holidays as established by the laws of the State of New York; and no employee shall be permitted to work more than six days in each week; those observing Saturday to be permitted to work Sunday in lieu thereof; all week workers to receive pay for legal holidays.

Eighth. The manufacturers will establish a regular weekly pay day and they will pay for labor in cash, and each piece worker will be paid for all work delivered as soon as his work is inspected and approved, which shall be within a reasonable time.

Ninth. All subcontracting within shops shall be abolished.

Tenth. The following schedule of the standard minimum weekly scale of wages shall be observed:

Machine cutters.....	\$25
Regular cutters.....	25
Canvas cutters.....	12
Skirt cutters.....	21

Jacket pressers	21
Underpressers	18
Skirt pressers	19
Skirt underpressers	15
Part pressers	13
Reefer pressers	18
Reefer underpressers	14
Sample makers	22
Sample skirt makers	22
Skirt basters	14
Skirt finishers	10

Buttonhole makers, Class A, a minimum of
\$1.25 per 100 buttonholes.

Class B, a minimum of 80 cents per 100 buttonholes.

As to piecework, the price to be paid is to be agreed upon by a committee of the employees in each shop, and their employer. The chairman of said price committee of the employees shall act as the representative of the employees in their dealings with the employer.

The weekly hours of labor shall consist of 50 hours in 6 working days, to wit, 9 hours on all days except the sixth day, which shall consist of 5 hours only.

Eleventh. No overtime work shall be permitted between the 15th day of November and the 15th day of January or during the months of June and July, except upon samples.

Twelfth. No overtime work shall be permitted on Saturdays except to workers not working on Saturdays, nor on any day for more than two and one-half hours, nor before 8 A. M. nor after 8.30 P. M.

Thirteenth. For overtime work all week workers shall receive double the usual pay.

Fourteenth. Each member of the manufacturers is to maintain a union shop; a "union shop" being understood to refer to a shop where union standards as to working conditions, hours of labor and rates of wages as herein stipulated prevail, and where, when hiring help, union men are preferred; it being recognized that, since there are differences in degrees of skill among those employed in the trade, employers shall have freedom of selection as between one union man and another,

and shall not be confined to any list, nor bound to follow any prescribed order whatever.

It is further understood that all existing agreements and obligations of the employer, including those to present employees, shall be respected; the manufacturers, however, declare their belief in the union, and that all who desire its benefits should share in its burdens.

Fifteenth. The parties hereby establish a Joint Board of Sanitary Control, to consist of seven members, composed of two nominees of the manufacturers, two nominees of the unions, and three who are to represent the public, the latter to be named by Meyer London, Esq., and Julius Henry Cohen, Esq., and in the event of their inability to agree, by Louis Marshall, Esq.

Said board is empowered to establish standards of sanitary conditions, to which the manufacturers and the unions shall be committed, and the manufacturers and the unions obligate themselves to maintain such standards to the best of their ability and to the full extent of their power.

Sixteenth. The parties hereby establish a Board of Arbitration to consist of three members, composed of one nominee of the manufacturers, one nominee of the unions, and one representative of the public, the latter to be named by Meyer London, Esq., and Julius Henry Cohen, Esq., and in the event of their inability to agree, by Louis Marshall, Esq.

To such board shall be submitted any differences hereafter arising between the parties hereto, or between any of the members of the manufacturers and any of the members of the unions, and the decision of such Board of Arbitration shall be accepted as final and conclusive between the parties to such controversy.

Seventeenth. In the event of any dispute arising between the manufacturers and the unions, or between any members of the manufacturers and any members of the unions, the parties to this Protocol agree that there shall be no strike or lockout concerning such matters in controversy until full opportunity shall have been given for the submission of such matters to said Board of Arbitration, and in the event of a determination of said controversies by said Board of Arbitration, only in

the event of a failure to accede to the determination of said board.

Eighteenth. The parties hereby establish a Committee on Grievances, consisting of four members composed as follows: Two to be named by the manufacturers and two by the unions. To said committee shall be submitted all minor grievances arising in connection with the business relations between the manufacturers and their employees.

Nineteenth. In the event of any vacancy in the aforesaid boards or in the aforesaid committee, by reason of death, resignation, or disability of any of the members thereof, such vacancy in respect to any appointee by the manufacturers and unions, respectively, shall be filled by the body originally designating the person with respect to whom such vacancy shall occur. In the event that such vacancy shall occur among the representatives of the public on such boards, such vacancy shall be filled by the remaining members representing the public in the case of the Board of Sanitary Control, and in the case of the Board of Arbitration both parties shall agree on a third arbitrator, and in case of their inability to agree, said arbitrator shall be selected by the governor of the State of New York.

LEASES ¹

Lease of Building for Long Term with Clauses Appropriate for Use in other Leases, Indexed and Annotated.

Williston, Sections 90n., 493n., 690n., 725n., 761n., 890-892, 926n., 1386n., 1403-1404, 1766, 1812, 1856, 1931, 1940, 1967, 1985.

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AGREEMENT made between herein-
after referred to as Landlord, and hereinafter
referred to as Tenant.

1. *Term and Premises.* The Landlord hereby leases to the
Tenant, and the Tenant hereby hires from the Landlord, for the
term of from to and including the
premises

Barker v. Hawk, 189 App. Div. 266, 179 N. Y. Supp. 216.

¹ See page 635, for other Contracts affecting Real Property.

2. *Rent.* The Tenant covenants to pay the rent of \$.
in equal payments of \$. in advance on

Williston, Section 1812.

Walton *v.* Stafford, 162 N. Y. 558, 57 N. E. 92.

Hayes *v.* Rosenblatt, 111 Misc. 370, 181 N. Y. Supp.
241.

Bushe *v.* Wolff, 171 N. Y. Supp. 253.

3. *Conditional Limitation.* The Tenant covenants that if the rent reserved by this lease or any part thereof shall be unpaid when due, or, if the Tenant shall fail to perform any of the covenants, conditions, provisions, and agreements herein contained, or, if a petition in bankruptcy shall be filed by or against the Tenant or if the Tenant shall be adjudged bankrupt or insolvent by any Court, or if a receiver or trustee in bankruptcy or a receiver of any property of the Tenant shall be appointed in any suit or proceeding brought by or against the Tenant, then and in each and every such case, the term hereby granted shall immediately cease, determine and come to an end, and the Landlord may recover and resume possession of the demised premises by any legal means.

Lindy Friedman Clothing Co., Inc., 275 Fed. 453;

Miller *v.* Levi, 44 N. Y. 489, L. R. A. 1915, C. 238;

Childs *v.* Burke, 110 Misc. 103, 180 N. Y. Supp. 919;

Winter Garden *v.* Dell's, Inc., 175 N. Y. Supp. 757;

Manhattan Life Ins. Co., *v.* Gosford, 3 Misc. 509, 23 N. Y.
Supp. 7;

(See cases cited under Clause 12.)

4. *Taxes and Water Rents.* The Tenant covenants to pay when due all taxes (other than income taxes), assessments, water rates, meter charges and other charges, extraordinary as well as ordinary, which shall, during the term of this lease be charged, assessed, imposed or grow due or payable upon or on account of said premises or any appurtenances thereof, by virtue of or under any present or future law or requirement of any governmental authority; and all charges for water, gas and electricity, light or power, or other service furnished to

said premises or the occupants thereof during said term; and all fees and charges of the.....
or other public or governmental authority, for construction, maintenance, occupation or use during said term of any vault, passageway or space in, over or under any street or sidewalk adjacent to the said premises, or for the construction, maintenance or use during said term of any part of any building covered by this lease within the limits of any street. The Tenant agrees on demand to produce and exhibit to the Landlord receipts by proper officials showing said payments. The Tenant may, however, defer the payment of any tax, assessment or other charge so long as the validity thereof shall be contested by the Tenant in good faith and by appropriate legal proceedings, provided that neither the premises nor the lien of such tax, assessment or other charge be meanwhile advertised for sale because of such non-payment, and provided further that the Tenant shall have furnished to the Landlord the bond of a surety company satisfactory to the Landlord or other security satisfactory to the Landlord, in an amount satisfactory to the Landlord, securing the Landlord against the payment of such tax, assessment or other charge so contested and against any and all loss, damage or penalty whatsoever in anywise arising from the failure of the Tenant to pay the same. If the Tenant shall, in violation of any provision of this lease, fail to pay or discharge any such tax, assessment or other charge, the Landlord may (but shall not be obliged to) pay or discharge the same, and the amount paid by the Landlord, with all expenses, interest and penalties connected therewith, shall be repaid by the Tenant on demand; and for all purposes under this lease and in any suit of any kind between the parties hereto any receipt showing the payment of such tax, assessment or other charge signed by any public official authorized to give similar receipts shall be conclusive evidence against the Tenant that the amount of such payment was due and payable and that such tax assessment or other charge was a valid and existing lien on the premises at the time of such payment.

Ward *v.* Union Trust Co., 224 N. Y. 73, 120 N. E. 81;
Barker *v.* Hawk, 189 App. Div. 266, 179 N. Y. Supp. 216.

5. *Covenant to Repair.* The Tenant covenants during the term of this lease to keep in good order and repair, inside and out, all buildings and structures which are now or shall hereafter be constructed on or appurtenant to said premises, and all equipment thereof, including, but not being limited to, all engines, dynamos, boilers, elevators, machinery, pipes, plumbing, wiring, gas and steam and electrical fittings, and all other equipment thereof. The Tenant agrees from time to time to make renewals and replacements of such equipment (of first-class modern character and efficiency at least equal to the original and sufficient for the same service) so that at all times such buildings, structures and equipment shall be in thorough good order, condition and repair.

Williston, Sections 645n., 1386n., 1967;
May v. Gillis, 169 N. Y. 330; 62 N. E. 385;
Street v. Central Brewing Co., 101 App. Div. 3, 91 N. Y. Supp. 547;
Gregory v. Manhattan Briar Pipe Co., 174 App. Div. 106; 160 N. Y. Supp. 916;
City of N. Y. v. McCarthy, 171 App. Div. 561, 157 N. Y. Supp. 711;
Elefante v. Pizitz, 182 App. Div. 819, 169 N. Y. Supp. 910, affirmed 230 N. Y. 567, 130 N. E. 896;
Allen v. Oscar G. Murray, 189 N. Y. Supp. 201.

6. *Covenant to Comply with Laws, Ordinances &c.* The Tenant covenants to promptly observe, comply with and execute at the Tenant's cost and expense all present and future laws, rules, requirements, orders, directions, ordinances and regulations of the State of and City of and of the United States of America, and of any and all governmental authorities or agencies, and of all municipal departments, bureaus, boards or officials of the City of and of the Board of Fire Underwriters or any other board or organization exercising similar functions, concerning said premises, or the vaults, passageways, franchises or privileges appurtenant thereto or connected with the enjoyment thereof, and shall, at his own expense, make any and all improvements

thereon or alterations thereto, structural or otherwise, that may be required at any time hereafter by any such present or future law, rule, requirement, order, direction, ordinance or regulation. If the Tenant, in violation of the foregoing provisions, shall fail to comply with and execute any such law, rule, requirement, order, direction, ordinance or regulation, the Landlord may (but shall not be obliged to) comply with the same, and the amount paid by the Landlord in order to so comply with the same, with all expenses, interest and penalties connected therewith, shall be repaid by the Tenant on demand; and for all purposes under this lease and in any suit of any kind between the parties hereto any receipt showing any payment for any work so done or material so furnished shall be conclusive evidence against the Tenant that the amount of such payment was necessary and reasonable.

- Herald Square Realty Co. *v.* Saks, 215 N. Y. 427, 109 N. E. 545;
Federal Assets Corporation *v.* Lucca Restaurant Co., 184 N. Y. Supp. 696, 113 Misc. 48;
Frank *v.* Sidney B. Bowman Automobile Co., 195 App. Div. 377, 186 N. Y. Supp. 402;
Davis Bros. Realty Corp. *v.* Harte, 112 Misc. 473, 183 N. Y. Supp. 173;
People *ex rel.* Penn. R. Co. *v.* Leo, 112 Misc. 578, 183 N. Y. Supp. 597;
Cohen *v.* Margolies, 192 App. Div. 217, 182 N. Y. Supp. 442;
Pross *v.* Excelsior Cleaning & Dyeing Co., 110 Misc. 195, 179 N. Y. Supp. 176;
Getty *v.* Fitch, Cornell & Co., 107 Misc. 404, 177 N. Y. Supp. 691;
Liebman *v.* Aldhous, 105 Misc. 728, 173 N. Y. Supp. 553;
Bubeck *v.* Farmers Loan & Trust Co., 180 App. Div. 542, 167 N. Y. Supp. 1049;
People *v.* Shevitz, 177 App. Div. 565, 164 N. Y. Supp. 603;
Younger *v.* Campbell, 177 App. Div. 403, 163 N. Y. Supp. 609; Williamsburgh Power Co. *v.* Shotten, 97 Misc. 716, 162 N. Y. Supp. 239;

- Deutsch *v.* Robert Hoe Estate, 174 App. Div. 685, 161 N. Y. Supp. 968;
Gregory *v.* Manhattan Briar Pipe Co., 174 App. Div. 106; 160 N. Y. Supp. 916;
Jacobs *v.* McGuire, 77 Misc. 119, 136 N. Y. Supp. 64;
Harder Realty and Constr. Co. *v.* Lee, 74 Misc. 436, 132 N. Y. Supp. 447;
Kalman *v.* Cox, 46 Misc. 589, 92 N. Y. Supp. 816; ·
Morrissy *v.* Rhineland Real Estate Co., 158 App. Div. 533, 143 N. Y. Supp. 826;
Warrin *v.* Haverty, 159 App. Div. 840, 144 N. Y. Supp. 1004;
Seymour *v.* Picus, 9 Misc. 48, 29 N. Y. Supp. 277.

7. *Covenant Against Assignment or Sublease.* The Tenant covenants not to assign, transfer, mortgage nor pledge this lease, or any renewal thereof, or to sublet the demised premises or any part thereof, without the prior written consent of the Landlord for every assignment or sublease, and the tenant agrees to deliver to the Landlord, simultaneously with the delivery of such consent, an agreement executed and acknowledged by the assignee assuming this lease, and agreeing to be personally bound by the covenants and conditions herein contained on the part of the Tenant, as if said assignee had been a party hereto, anything to the contrary herein contained notwithstanding, and the Tenant agrees to execute and deliver to the Landlord a duly and properly executed guaranty of the payment of the rent, taxes and all other payments provided for, and of the performance of all covenants, conditions and agreements contained in this lease by such assignee; it being agreed that the granting, giving or waiving of any one or more of such consents shall not render unnecessary, or be deemed or operate as a waiver of any subsequent consent or consents.

Williston, Section 411 n.;

Presby *v.* Benjamin, 169 N. Y. 377, 62 N. E. 430, 57 L. R. A. 317;

Boskowitz *v.* Cohen, 197 App. Div. 776, 189 N. Y. Supp. 419;
Broadway & 94th Street, Inc., *v.* C. & L. Lunch Co., 116 Misc. 440, 190 N. Y. Supp. 563;

- 78th St. Co. v. Purssell, 166 App. Div. 684, 152 N. Y. Supp. 52;
 Lynde v. Hough, 27 Barb. 415, 11 L. R. A. (N. S.) 489, 2 B. R. C. 805;
 Barrington v. Watson, 38 Hun, 535;
 Re Pennewell, 119 Fed. 139;
 Kramer v. Amberg, 53 Hun, 427, 6 N. Y. Supp. 303;
 Rouiaine v. Simpson, 84 N. Y. Supp. 875;
 Fischer v. Ginzberg, 191 App. Div. 418, 181 N. Y. Supp. 516;
 Re Prudential Lithographing Co., 270 Fed. 469;
 Gazlay v. Williams, 147 Fed. 678, 77 C. C. A. 662, 14 L. R. A. (N. S.) 1199; affirmed, 210 U. S. 41, 28 Sup. Ct. 687, 52 L. Ed. 950;
 Bemis v. Wilder, 100 Mass. 446.

8. *Permission to Enter.* The Tenant covenants to permit the Landlord and its agents.....months prior to the expiration of the term hereby granted, or any renewal thereof, to place in one or more conspicuous places upon the exterior of the premises signs advertising the premises "For Sale" and "To Let" and also to admit the Landlord at all reasonable hours to visit and examine the premises for any purpose.

9. *Fire and Liability Insurance.* The Tenant covenants during the term of this lease to keep all buildings, structures and equipment belonging to the Landlord, in or appurtenant to the premises, insured against loss or damage by fire to the full amount of the value thereof, and for an amount not less than, in good and solvent insurance companies satisfactory to the Landlord, for the benefit of the Landlord, with loss, if any, payable to the Landlord, or to any mortgagee or trustee under any mortgage prior or superior to this lease, as the Landlord shall direct. All policies shall contain such provisions as may be required by the Landlord, or by any such mortgagee or trustee under any such mortgage and shall be delivered to and held by the Landlord or in accordance with the Landlord's directions. During the term of this lease the Tenant covenants to provide and keep in force for the benefit of the Landlord, general liability policies in standard form, protecting the Landlord against any and all liability occasioned by accident or

disaster, such policies to be written by good and solvent insurance companies satisfactory to the Landlord, in the amount of \$. in respect to any one accident or disaster, and in the amount of \$. in respect to injuries to any one person. The tenant agrees to pay all premiums and charges for all of the aforesaid insurance, and if the Tenant shall fail to make any such payment when due, the Landlord may make it and the Tenant agrees to repay the amount thereof to the Landlord on demand. The Tenant shall not violate or permit to be violated any condition of any of said policies, and the Tenant shall so perform and satisfy the requirements of the companies writing such policies that at all times companies of good standing satisfactory to the Landlord shall be willing to write such insurance.

10. *Plate Glass Insurance.* The Tenant agrees to insure the plate glass in the demised premises for the benefit of the Landlord and to pay the premiums on said insurance as soon as the same shall become due and payable, and the Tenant agrees in case of the default in payment of said premiums that the Landlord may pay the same and that they shall become part of the rent and be payable and collectible in the same manner as said rent.

11. *Surrender on Expiration of Term.* The Tenant covenants that it will on the last day of the term hereby demised or on the last day of the renewal hereof, if this lease shall be renewed, peaceably and quietly leave, surrender and yield up unto the Landlord the demised premises, including all improvements added to the premises by either of the parties hereto, its successors or assigns, in as good state and condition as reasonable use and wear thereof will permit, damage by fire and other elements excepted.

Levine *v.* Sidney Rosenstein, 109 Misc. 299, 179 N. Y. Supp. 669.

12. *Recovery of Possession on Default.* The Tenant covenants that if the rent reserved by this lease, or any part thereof, shall be unpaid when due, or the Tenant shall fail to perform any of the covenants, conditions, provisions and agreements herein contained or if a petition in bankruptcy shall be filed by or

against the Tenant or if the Tenant shall be adjudged insolvent by any Court, or if a trustee in bankruptcy or a receiver of any property of the Tenant, shall be appointed in any suit or proceeding by or against the Tenant, or if the Tenant shall be dispossessed or if the demised premises shall become vacant or abandoned, the Landlord may recover and resume possession of the demised premises by force or otherwise, without being liable to prosecution therefor. In the event of such resumption of possession under this lease or by summary proceedings or any other means, the Landlord may remove all persons and property from the demised premises and may relet the same as agent for the Tenant. The Landlord shall be entitled to hold the Tenant liable for the difference between the rents and payments that would have been payable during the residue of the original term if this lease had continued in force and the net rent for the residue of the term realized by the Landlord by means of reletting the demised premises to other parties, the Tenant agrees that such net rent shall be determined by deducting from the entire rent received by reason of such reletting, the expense incurred by the Landlord for necessary repairs to the demised premises or by reason of the breach of any of the terms, covenants and conditions of this lease and any and all expenses incurred in recovering the possession of the premises. The Tenant agrees that said reletting may be for the whole of said residue of the demised term or for portions thereof from time to time, and may be of the whole premises or of portions thereof, from time to time, as opportunity may offer and as the Landlord may deem expedient, and in such case, the Tenant shall be liable for such difference from time to time, as the rent would have fallen due if this lease had continued, deducting from the original of each payment for a given period, as provided herein, the net amount realized during the last preceding similar period of reletting as aforesaid.

- Mann v. Munch Brewery*, 225 N. Y. 189, 121 N. E. 746,
Rev. 173 App. Div. 746, 160 N. Y. Supp. 314;
McCready v. Lindenborn, 172 N. Y. 400, 65 N. E. 208;
Michaels v. Fishel, 169 N. Y. 381, 62 N. E. 425;
People v. St. Nicholas Bank, 151 N. Y. 592, 45 N. E. 1129;

- Re Hevenor, 144 N. Y. 271, 39 N. E. 393;
Hall *v.* Gould, 13 N. Y. 127;
Darmstadt *v.* Knicherbocker, 188 App. Div. 129, 176 N. Y. Supp. 588;
Stimpson *v.* Minsker, 177 App. Div. 536, 164 N. Y. Supp. 465;
Sockloff *v.* Burnstein, 177 App. Div. 471, 164 N. Y. Supp. 262;
Berg *v.* Kaiser, 137 App. Div. 1, 122 N. Y. Supp. 85;
Wolf *v.* Rudinsky, 135 App. Div. 172, 119 N. Y. Supp. 1007;
Cohen *v.* Carpenter, 128 App. Div. 863, 113 N. Y. Supp. 168;
Slater *v.* Von Chorus, 120 App. Div. 16, 104 N. Y. Supp. 996;
Anzalone *v.* Paskusz, 96 App. Div. 188, 89 N. Y. Supp. 203;
Harding *v.* Austin, 93 App. Div. 564, 87 N. Y. Supp. 887;
Baylies *v.* Ingram, 84 App. Div. 360, 82 N. Y. Supp. 891;
Laveites *v.* Gottlieb, 187 N. Y. Supp. 452, 115 Misc. 118;
Rooney *v.* Flynn, 98 Misc. 610, 163 N. Y. Supp. 200;
Ashton *v.* Ross, 98 Misc. 586, 163 N. Y. Supp. 99;
Fleischer *v.* Friob, 97 Misc. 343, 161 N. Y. Supp. 940;
Asher *v.* Goldberg, 61 Misc. 634, 114 N. Y. Supp. 413;
Slater *v.* Bonfiglio, 56 Misc. 385, 106 N. Y. Supp. 861;
Pannuto *v.* Foglia, 55 Misc. 244, 105 N. Y. Supp. 495;
Crosby *v.* Jarvis, 46 Misc. 436, 92 N. Y. Supp. 229;
Landesman *v.* Hauser, 45 Misc. 603, 91 N. Y. Supp. 6;
Fleishauer *v.* Bell, 44 Misc. 240, 88 N. Y. Supp. 922;
Lyons *v.* Gavin, 43 Misc. 546, 88 N. Y. Supp. 252;
McMahon *v.* Howe, 40 Misc. 659, 82 N. Y. Supp. 984;
Manhattan Life *v.* Gosford, 3 Misc. 509, 23 N. Y. Supp. 7.
Lamson Consolidated Store Service Co. *v.* Rowland, 114 Fed. 639.
Weeks *v.* International Trust Co., 125 Fed. 370.
16-18 East 30 St. Realty Corporation *v.* Miller, 191 N. Y. Supp. 332.

13. *Waiver of Right to Redeem.* The Tenant waives for itself and all persons claiming under it all right to redeem the premises (under Secs. 1437 and 1438 of the Civil Practice Act of the State of New York or under any other present or future law) after a warrant to dispossess shall have been issued or

after a judgment in an action of ejectment shall have been made or entered.

Terwilliger v. Browning, King & Co., 222 N. Y. 47, 118 N. E. 216.

14. *Fire.* The Tenant agrees that, in case of damage by fire or the elements, the Tenant will give immediate notice thereof in writing to the Landlord, and, if a part only of the said building shall be damaged, but not so as to render the premises wholly untenable, the rent shall abate proportionately and the Landlord shall commence within days after notice to repair the same at its own cost and expense, and complete said repairs with due and reasonable diligence; if the damage shall be so extensive as to render the said building wholly untenable, the rent shall cease from the time the Landlord shall be notified by the Tenant of such damage until the said building is restored to a tenenable condition and; after the said building is restored to a tenenable condition, the rent shall begin again to run and be payable as before the damage; but, in case the said building shall be totally destroyed by fire or the elements, or the damage shall be so great that it will be necessary to rebuild the entire building or erect a new building on the site, the rent shall be apportioned pro rata and paid up to the time of such destruction or damage, and upon such payment being duly made by the Tenant, this lease shall come to an end. The Tenant hereby expressly waives the provisions of Section 227 of the Real Property Law of the State of New York relating to the destruction of the demised premises by fire or the elements.

Williston, Sections 944-966.

May v. Gillis, 169 N. Y. 330, 62 N. E. 385;

Dazian v. Ittelson, 76 Misc. 228, 134 N. Y. Supp. 572;

Weinberg v. Savitzky, 47 Misc. 132, 93 N. Y. Supp. 485;

Brunswick v. Wallace, 65 Misc. 27, 119 N. Y. Supp. 287;

Rieser v. Morganstern, 167 N. Y. Supp. 945;

Eisfeldt v. Medlin, 173 N. Y. Supp. 503;

Baitzel v. Rhineland, 179 App. Div. 735, 167 N. Y. Supp. 343;

Vann *v.* Rouse, 94 N. Y. 401, 23 L. R. A. 160;
Werner *v.* Padula, 49 App. Div. 135, 63 N. Y. Supp. 68,
aff'd, without opinion: 167 N. Y. 611, 60 N. E. 1122;
Bacon *v.* Albany Perforated Wrapping Paper Co., 22 Misc.
592, 49 N. Y. Supp. 620;
Copeland *v.* Luttgen, 17 Misc. 604, 40 N. Y. Supp. 653.

15. *Covenants Against Alterations.* The Tenant covenants not to make any alterations, additions or improvements to the demised premises, without the written consent of the Landlord, and to permit the Landlord and agents at all reasonable times to enter the demised premises or any portion thereof for the purpose of examining the same or of making such repairs, alterations or improvements as the Landlord may see fit voluntarily to make.

Elefante *v.* Pizitz, 182 App. Div. 819, 169 N. Y. Supp. 910;
affirmed 230 N. Y., 567, 130 N. E. 896;
Baitzel *v.* Rhineland, 179 App. Div. 735, 167 N. Y. Supp.
343.

16. *Covenants Against Obstructions.* The Tenant covenants and agrees that it will not incumber or obstruct or permit to be incumbered or obstructed the sidewalk in front of the demised premises, and that it will keep the said sidewalk in good repair, and free from snow and ice.

17. *Release from Liability for Negligence.* The Tenant covenants that the Landlord shall not be liable for any damage or injury by water which may be sustained by the Tenant, its agents or employees, or for any damage or injury resulting from negligence, or from the breakage, leakage or obstruction of pipes, and the Tenant agrees to hold the Landlord harmless from any and all damage in respect to the matters provided for in this lease.

18. *Subordination Clause.* The Tenant covenants that this lease is and shall be at all times, subject and subordinate in lien to the lien of any mortgage or mortgages now existing or which the Landlord or any subsequent owner of the demised premises shall make covering said premises, and to any and all

advances made or to be made thereunder, and to the interest thereon. The Tenant covenants to execute, acknowledge and deliver, upon request, all documents demanded by the Landlord to subordinate this lease to any mortgage.

Bushe v. Wolff, 171 N. Y. Supp. 253.

19. *Provision Against Waiver*. The failure of the Landlord to insist upon strict performance of any of the covenants or conditions of this lease or to exercise any option herein conferred in any one or more instances, shall not be construed as a waiver or relinquishment for the future of any such covenants, conditions or options, but the same shall be and remain in full force and effect.

Williston, Section 689;

Fidelity Trust Co. v. Kohn, 27 Pa. Super. Ct. 374;

Douglas v. Herms, 53 Minn. 204, 54 N. W. 1112;

Chalker v. Chalker, 1 Conn. 79;

Westmoreland, &c. Gas Co. v. DeWitt, 130 Pa. St. 235, 254;
18 Atl. 724;

Dumpor's Case, 4 Co. 119b;

Rouiaine v. Simpson, 84 N. Y. Supp. 875;

Thayer v. Meeker, 86 Ill. 470.

20. *Surrender Invalid unless Written*. The Tenant covenants that no surrender of the premises or of the remainder of the term herein, shall be valid unless accepted by the Landlord in writing.

Williston, Section 690n.;

Schmidt v. Vahjen, 143 App. Div. 479, 127 N. Y. Supp. 1038;

Levitt v. Zindler, 136 App. Div. 695, 121 N. Y. Supp. 483;

Goldsmith v. Schrolder, 93 App. Div. 206; 87 N. Y. Supp.
558.

Krumdieck v. Ebbs, 84 N. Y. Supp. 525;

Crane v. Edwards, 80 App. Div. 333, 80 N. Y. Supp. 747.

21. *Notices*. Notices, demands and communications hereunder to the Tenant or to the Landlord shall be validly and

sufficiently served, given or made if mailed by registered mail, with postage prepaid, and if intended for the Tenant addressed to the Tenant at.....or if intended for the Landlord addressed to the Landlord at..... Either party may designate, by notice in writing, a new address, to which any such notice, demand or communication shall thereafter be so addressed and mailed.

22. *Covenant for Quiet Enjoyment.* The Landlord covenants that the Tenant on paying the rent reserved and performing the covenants and agreements aforesaid shall, at all times during the term, peaceably and quietly have, hold and enjoy the said demised premises.

Fifth Avenue Building Co. v. Kernochan, 221 N. Y. 370,
117 N. E. 579;

Baitzel v. Rhineland, 179 App. Div. 735, 167 N. Y. Supp.
343;

Meyer v. Schulte, 160 App. Div. 236, 144 N. Y. Supp. 1028;
Affirmed, 213 N. Y. 675, 107 N. E. 1081;

Title Guarantee & Trust Co. v. Twenty-first St. & Fifth Av.
Corp., 110 Misc. Rep. 126, 180 N. Y. Supp. 358;

Paddell v. Janes, 90 Misc. 146, 152 N. Y. Supp. 948;

Rainier v. Smith, 65 Misc. 560, 120 N. Y. Supp. 993.

23. *Cancellation on Sale or Exchange.* The Landlord or any subsequent owner of the premises upon making a contract for the sale or exchange of the demised premises shall have the right to terminate and end this lease, and the term hereby granted, and all the right and interest of the Tenant under it by serving a notice to that effect upon the Tenant personally or by mailing the same addressed to the Tenant at the demised premises and upon the expiration of.....after the delivery or mailing of said notice, the term created by this lease and the tenancy hereunder, and all of the tenant's rights to the possession or occupancy of the demised premises shall cease, expire and come to an end. The Tenant covenants to execute, acknowledge and deliver a surrender of this lease within..... days after the service or mailing of said notice and upon delivering said surrender of lease and vacating the demised

premises shall be entitled to a payment of \$.if the Tenant has performed all the covenants of this lease.

- Scheele *v.* Waldman, 136 App. Div. 679, 121 N. Y. Supp. 486;
 Douglaston Realty Co. *v.* Hess, 124 App. Div. 508, 108 N. Y. Supp. 1036;
 Broadway John Street Corporation *v.* Huyler, 115 Misc. 621, 189 N. Y. Supp. 223;
 Madison Ave. Realty Co. *v.* Martin, 114 Misc. 315, 187 N. Y. Supp. 318;
 Childs Co. *v.* Burke, 110 Misc. 103, 180 N. Y. Supp. 919;
 Bruder *v.* Crafts, 79 Misc. 88, 139 N. Y. Supp. 307;
 Krim *v.* Varvori, 97 Misc. 407, 161 N. Y. Supp. 229;
 Griffin *v.* Barton, 22 Misc. 228, 49 N. Y. Supp. 1021;
 Hyman *v.* Federal Doll Co., 185 N. Y. Supp. 678;
 Miller *v.* Levi, 44 N. Y. 489;
 Lusonray *v.* McCastline, 192 App. Div. 156, 182 N. Y. Supp. 425;
 Stoddard *v.* Winter, 179 N. Y. Supp. 741;
 Reeder *v.* Sayre, 70 N. Y. 180, 26 Am. Rep. 567;
 Butler & Herman *v.* Meth, 122 N. Y. Supp. 271.

24. *Payments and Damages as Rent.* The Tenant covenants that in case the Landlord, by reason of the failure of the Tenant to perform any of the covenants, agreements, or conditions herein contained, shall be compelled to pay or shall pay any sum of money, or shall be compelled to do or shall do any act which requires the payment of money, then the sum or sums so paid or required to be paid, together with all interests, costs and damages, shall be added to the instalment of rent, next becoming due or to any subsequent instalment of rent and shall be collectible as additional rent in the same manner and with the same remedies as if it had been originally reserved.

- Williston, Section 790;
 Cuyler Realty Co. *v.* Teneo Co., Inc., 196 App. Div. 440, 188 N. Y. Supp. 340;
 Knepper *v.* Rothbaum, 104 Misc. 554, 172 N. Y. Supp. 109.

25. *Deposit as Security and Liquidated Damages.* The Tenant covenants upon the execution and delivery of this lease to deposit with the Landlord \$. as security for the payment of the rent reserved by this lease and also as security for the performance by the Tenant of the covenants, conditions and agreements of this lease, and also for any damage which the Landlord may sustain by reason of any act of the Tenant. The Tenant agrees that if the Tenant vacates or surrenders the premises or is dispossessed or if the Tenant violates any of the covenants, conditions and agreements of this lease, then and in that event, the sum of \$., deposited as security, with interest thereon, shall be retained by the Landlord as liquidated and stipulated damages. The parties agree that said \$. shall be liquidated damages because they cannot ascertain the exact amount of the damage which the Landlord may sustain in the event of any breach of any of the covenants of this lease. The Tenant covenants that in case the Landlord shall sell or exchange the demised premises during the term of this lease that the Landlord may pay the deposit made under the terms of this lease to any subsequent owner, and in that event, the lessee agrees to release the Landlord from all liability for the return of said deposit and to hold the subsequent owner liable for the same.

Nothing contained in this clause shall in any way diminish or be construed to waive any of the Landlord's other remedies, and the deposit of \$. shall in no event be applicable to any rent due or to become due hereunder.

- Williston, Sections 777n. and 790;
 Ridley *v.* Sudbrink, 105 Misc. 52, 172 N. Y. Supp. 517;
 Silverman *v.* Hill, 169 N. Y. Supp. 409 (not reported officially);
 Markman *v.* 451-455 Grand Street, 168 N. Y. Supp. 522;
 Stimpson *v.* Minsker, 177 App. Div. 536, 164 N. Y. Supp. 465;
 Crausman *v.* George G. Graham Co., 95 Misc. 608, 159 N. Y. Supp. 709;
 Blumberg *v.* Corday, 160 N. Y. Supp. 613;

- Fleischer v. Friob* 97 Misc. 343, 161 N. Y. Supp. 940, affirmed 177 App. Div. 921;
Feinsot v. Burstein, 82 Misc. 429, 143 N. Y. Supp. 1040, 78 Misc. 259, 138 N. Y. Supp. 185; affirmed 213 N. Y. 703; 108 N. E. 1093;
Slater v. Bonfiglio, 56 Misc. 385, 106 Supp. 861;
Lesser v. Stein, 39 Misc. 349, 79 N. Y. Supp. 849;
Ascher Simon Realty Co. v. Goldberg, 61 Misc. 634, 114 N. Y. Supp. 413;
Seletzky v. James, 69 Misc. 612, 126 N. Y. Supp. 82;
D'Appuzo v. Albright, 76 N. Y. Supp. 654;
Adler v. Kramer, 39 Misc. 642, 80 N. Y. Supp. 624;
Horowitz v. Eidelheit, 151 N. Y. Supp. 283;
Franceschini v. Chaucer, 110 N. Y. Supp. 775;
Feyer v. Reiss, 154 App. Div. 272, 138 N. Y. Supp. 964;
Mann v. Munich Brewery, 225 N. Y. 189, 121 N. E. 746; reversing, 173 App. Div. 746, 160 N. Y. Supp. 314;
McCready v. Lindenborn, 172 N. Y. 400, 65 N. E. 208;
Michaels v. Fishel, 169 N. Y. 381, 62 N. E. 425;
People v. St. Nicholas Bank, 151 N. Y. 592, 45 N. E. 1129, 69 L. R. A. 154;
Matter of Hevenor, 144 N. Y. 271, 39 N. E. 393;
Hall v. Gould, 13 N. Y. 127;
Darmstadt v. Knickerbocker, 188 App. Div. 129, 176 N. Y. Supp. 588;
Seidlitz v. Auerbach, 230 N. Y. 167, 129 N. E. 461;
Sockloff v. Burstein, 177 App. Div. 471, 164 N. Y. Supp. 262;
Ashton v. Ross, 98 Misc. 586, 163 N. Y. Supp. 99;
Rooney v. Flynn, 98 Misc. 610, 163 N. Y. Supp. 200;
Halpern v. Manhattan, 173 App. Div. 610, 160 N. Y. Supp. 616; affirmed, 220 N. Y. 655, 115 N. E. 718;
Butler v. Stellman, 93 Misc. 151, 157 N. Y. Supp. 22;
Tepper v. Minsker, 93 Misc. 36, 156 N. Y. Supp. 667;
Berg v. Kaiser, 137 App. Div. 1, 122 N. Y. Supp. 85;
Wolf v. Rudinsky, 135 App. Div. 172, 119 N. Y. Supp. 1007;
Simon v. Schmitt, 118 N. Y. Supp. 326;
Pannuto v. Foglia, 55 Misc. 244, 105 N. Y. Supp. 495;
Slater v. Van Chorus, 120 App. Div. 16, 104 N. Y. Supp. 996;
Crosby v. Jarvis, 46 Misc. 436, 92 N. Y. Supp. 229;

Landesman *v.* Hauser, 45 Misc. 603, 91 N. Y. Supp. 6;
Anzolone *v.* Paskusz, 96 App. Div. 188, 89 N. Y. Supp.
203;

Lyons *v.* Gavin, 43 Misc. 659, 88 N. Y. Supp. 252;

McMahon *v.* Howe, 40 Misc. 546, 82 N. Y. Supp. 984;

Lewis *v.* Stafford, 24 Misc. 717, 53 N. Y. Supp. 801;

Baldwin *v.* Thibaudeau, 17 N. Y. Supp. 532.

26. *Covenant by Landlord as to Title and Encumbrances.* The Landlord covenants that it has good title to the demised premises and that the same shall be on free and clear of all liens, encumbrances, violations and leases except except that if there be any lien other than those referred to herein or any violation existing against the demised premises, the Landlord agrees to remove, discharge and cancel the same.

27. *Provision in Event of Condemnation.* In the event that the demised premises, or any part thereof, are taken in condemnation proceedings or by any right of eminent domain the entire award shall be made to the Landlord without deduction therefrom for any estate hereby vested in the Tenant and the Tenant shall receive no part of any such award. The Tenant hereby expressly assigns to the Landlord any and all such awards, together with any and all rights of the Tenant now or hereafter arising, in and to the same or any part thereof. If only a portion of the leased premises be so taken, the Landlord shall do such work as to make a complete architectural unit of the remainder of the building on the demised premises and the rental herein reserved from and after the date from which the award made to the Landlord shall commence to draw interest, shall be reduced by an amount equal to six per cent. of an amount determined by subtracting from the amount of such award the expense actually incurred by the Landlord in doing the work last above described. No such taking shall operate as or be deemed an eviction of the Tenant or in any way terminate, diminish, suspend, abate or impair the obligation of the Tenant to pay full rental or his obligation to fully observe and perform all covenants on his part herein contained, or any other obligation of the Tenant herein reserved for the benefit of the Landlord, except as in this paragraph above provided.

- If more than fifty per cent. of the ground area of the leased premises be so taken the term and estate hereby granted shall at the election of the Tenant cease and expire on the date when interest shall commence to accrue on such award provided that the Tenant shall at least thirty days before the confirmation of such award give written notice to the Landlord of such election.

28. *Provision against Partial Eviction.* No permanent or temporary revocation or modification of any licence, permit, privilege or right to occupy or use or maintain any vault, passageway or structure in, over or under any street or sidewalk, nor any permanent or temporary deprivation of any right, privilege or easement appurtenant to the premises, shall operate as or be deemed an eviction of the Tenant or in any way terminate, diminish, suspend, abate or impair the obligation of the Tenant to pay full rental or his obligation to fully observe and perform all covenants on his part herein contained, or any other obligation of the Tenant herein reserved for the benefit of the Landlord.

Fifth Avenue Building Co. v. Kernochan, 221 N. Y. 370
117 N. E. 579.

29. *Covenant to Indemnify.* The Tenant covenants to indemnify and save harmless the Landlord against any and all claims arising from the conduct or management of or from any work or thing whatsoever done in or about the demised premises or any building or structure thereon or the equipment thereof during said term, or arising during said term from any condition of any street or sidewalk adjoining said premises or of any vaults, passageways or spaces therein or appurtenant thereto, or arising from any act or negligence of the Tenant or any of its agents, contractors or employees, or arising from any accident, injury or damage whatsoever, however caused, to any person or persons, or to the property of any person, persons, corporation or corporations, occurring during said term on, in or about the leased premises or upon or under the sidewalks in front thereof, and from and against all costs, counsel fees, expenses and liabilities incurred in or about any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against the Landlord by reason of any such claim,

the Tenant, on notice from the Landlord, shall resist or defend such action or proceeding, by counsel satisfactory to the Landlord.

30. *Covenant to Bind Heirs, etc.* It is agreed that the provisions, covenants and conditions of this lease shall bind and enure to the benefit of the legal representatives, heirs, successors, assigns of the parties and to grantees of the Landlord, excepting that no assignment by or through the Tenant in violation of the provisions of this lease shall vest any rights in the assignee.

Williston, Section 430;

Real Property Law of State of New York, Sec. 223;

Garelik v. Rennard, 116 Misc. 352, 190 N. Y. Supp. 371.

Lindenberg v. Howland, 187 N. Y. Supp. 917; 115 Misc. 244;

Childs Co. v. Burke, 110 Misc. 103, 180 N. Y. Supp. 919;

Douglaston Realty Co. v. Hess, 124 App. Div. 508, 108 N. Y. Supp. 1036;

Adler v. Lowenstein, 52 Misc. 556, 102 N. Y. Supp. 492;

New York Mutual Life Ins. Co. v. Armstrong, 117 U. S. 591, 597; 29 L. E. 997, 6 S. C. 877;

Warnecke v. Lembea, 71 Ill. 911;

Griswold v. Sawyer, 125 N. Y. 411, 26 N. E. 464;

Sulz v. Mutual Reserve Fund, 145 N. Y. 563, 40 N. E. 242.

Stoddard v. Winter, 179 N. Y. Supp. 741;

Walker v. Bradley, 89 Misc. 516, 153 N. Y. Supp. 686;

Lewis v. Bollinger, 115 Misc. 221, 187 N. Y. Supp. 563.

Lease Providing for Erection of Building by Landlord.

AGREEMENT made, between, and hereinafter called the "Landlord," and, hereinafter called the "Tenant" WITNESSETH:

1. The Landlord for and in consideration of the rents, covenants, conditions, provisions and agreements hereinafter mentioned, reserved and contained on the part and behalf of the Tenant to be paid, kept and performed, has granted and demised and the said Tenant has hired the premises bounded and described as follows:

To have and to hold the above mentioned and described

premises, with the appurtenances, unto the tenant for and during and until the full end and term of years from the date of the completion of the building to be erected by the Landlord.

2. The Landlord agrees that he will erect upon the premises above described a story in accordance with the plans and specifications prepared by , Architect. Said plans and specifications have been agreed upon between the parties hereto simultaneously with the execution of this lease, and that said building shall be erected under the direction of the said architect, whose decision in writing upon any matter relating to the erection of such building shall be final. Said building shall be erected according to law and shall be completed as soon as possible, delay caused by strikes or lockouts or other causes not under the control of the Landlord excepted. The architect shall upon the substantial completion of said building certify that fact in writing, which certificate shall be binding, final and conclusive for all purposes under this lease. The Landlord shall erect the said building at its own cost and expense, and said building shall at all times belong to the Landlord.

3. The Tenant agrees to pay the yearly rent of , lawful money of the United States of America, in annual payments of in advance, the first payment to be made immediately upon the completion of the building and every month thereafter in advance.

4. If the rent reserved or any part thereof shall be unpaid on any day of payment whereon the same ought to be paid as aforesaid, or if default shall be made in any of the covenants, conditions, provisions or agreements herein contained on the part and behalf of the said tenant to be kept, performed, observed or fulfilled, then and in each and every such case the term hereby demised shall cease, determine and come to an end, and from thenceforth it shall and may be lawful for the Landlord to recover and resume possession of the said demised premises and every part thereof, and to remove all persons therefrom, and the same to have again, repossess and enjoy as in its first and former estate, anything herein contained to the contrary thereof in any wise notwithstanding.

5. The Tenant covenants to pay to the Landlord yearly and every year during the said term hereby granted, the rent reserved, on the days and in the manner prescribed as afore-said for the payment thereof, without any deduction, or delay, according to the true intent and meaning of this lease.

6. The Tenant further covenants and agrees that it will, at its own proper cost and charges, bear, pay and discharge, within thirty (30) days after the same shall become a lien against the demised premises, any and all water rents or charges, whether regular or by meter, or both, which shall be imposed, assessed or charged upon or against the demised premises or any part thereof, by any authority or law, present or future, whatsoever, and will, within twenty (20) days after such payment, deliver to the Landlord the receipt showing such payment, and, in the event of the Tenant failing to pay the same, it shall and may be lawful for the Landlord, without notice or demand, to pay the amount of any such water charge, with any expense attending the same, and the amount so paid shall immediately be due and payable to the Landlord by the Tenant as additional rent, and shall be collectible as rent within the meaning of all the terms, covenants, conditions and agreements of this lease.

7. The Tenant covenants that it will, throughout said term at its own expense, make and do all repairs of all kinds, both inside and outside (except repairs made necessary by fire, or by damage by the elements rendering the building untenable as a whole or any substantial part thereof) to the demised premises, including the roof thereof, and keep the same in good order and repair, and observe and be responsible for, and bear all expenses of complying with all orders, ordinances, rules, regulations and requirements of all Municipal, State and Federal authorities relative to the demised premises or any part thereof.

8. The Tenant covenants that it will not, at any time or times, hereafter, during the continuance of the term hereby demised, assign, transfer or make over the whole of the premises hereby granted or its present lease, or any renewal thereof, or any of its term or time therein or sublet the same without the consent of the Landlord in writing, for that purpose first had

and obtained for every assignment and there shall be delivered to the Landlord, simultaneously with the delivery of such; instrument of consent, an agreement duly executed by the assignee assuming this lease, and agreeing to be personally bound by the covenants and conditions herein contained on the part of the Tenant, as if said assignee had been a party hereto, anything to the contrary herein contained notwithstanding, and there shall be further delivered to the Landlord a due and properly executed guaranty, of the payment of the rent, and water rents provided for, and of the performance of the other covenants, conditions and agreements contained in this lease by such assignee; it being agreed that such consent on the part of the Landlord shall not be unreasonably withheld and that the granting, giving or waiving any one or more of such consents shall not render unnecessary, or be deemed or operate as a waiver of, any subsequent consent or consents.

9. The Tenant covenants to permit the Landlord, six months prior to the expiration of the term hereby granted, or any renewal thereof, to put in one or more conspicuous places upon the exterior of said leased premises, the usual "For Sale" and "To Let" notices, and that the same shall remain thereon, and that applicants to lease or purchase will be admitted at all reasonable hours to visit and examine said premises.

10. The Tenant agrees to procure policy of insurance in the sum of indemnifying the Landlord for damages against loss on account of bodily injuries accidentally suffered or alleged to have been suffered, by any person or persons not employed by the assured, while in or about the demised premises, which policy shall be of the form commonly used for this purpose and be delivered to the Landlord who shall retain said policy; and the Tenant agrees to renew the said policy from time to time at its own expense during the term hereby demised, so that the Landlord will always have a valid liability policy outstanding and in his possession, and upon default by the Tenant in furnishing said policy or paying the premiums therefor, the Landlord may cause said policy to be issued for account of the Tenant and pay said premiums and add the amount so paid to the rent next to become due.

11. The Tenant covenants that it shall and will on the last day of the term hereby demised or on the last day of the renewal hereof, if this lease shall be renewed, peaceably and quietly leave, surrender and yield up unto the Landlord the demised premises, including all improvements added to the premises by either of the parties hereto, its successors or assigns, in as good state and condition as reasonable use and wear thereof will permit, damage by fire and the other elements excepted. In case the Tenant shall put up any fixtures, plumbing, machinery, appliances or apparatus of any kind in said premises which shall be fastened to the walls, floors, ceilings or woodwork or any part of the building, the Tenant shall have the right to remove the same, provided that any injury caused said walls, floors, ceilings, woodwork or building by such removal shall be repaired by the Tenant.

12. The Tenant further covenants and agrees that if the Tenant shall be dispossessed, or if the said demised premises become vacant or abandoned, the Landlord or its agents may recover and resume possession of the said demised premises by force or otherwise and the same have again and repossess and enjoy, without being liable for prosecution therefor, and, in the event of such resumption of possession or otherwise under this lease or by reason of summary proceedings, the Landlord may remove all persons and property from the demised premises and may relet the same as agent for the Tenant, and the Landlord shall be entitled to hold the said Tenant liable for the difference between the rents and payments that would have been payable during the residue of the original term if this lease had continued in force and the net rent for such residue realized by the Landlord by means of reletting the demised premises to other parties, it being understood and agreed between the parties hereto that such net rent shall be determined by deducting from the entire rent received by reason of such reletting, first, the expense incurred by the Landlord in recovering possession of the said demised premises and reletting the same, and second, any costs or expenses incurred by the Landlord for necessary repairs to the demised premises or by reason of the breach of any of the terms, covenants and conditions of this lease, and it being further understood and

agreed that such reletting may be for the whole of said residue of the demised term or for portions thereof from time to time, and may be of the whole premises or of portions thereof, from time to time, as opportunity may offer and as the Landlord may deem expedient, and, in such case, the Tenant shall be liable for such difference from time to time, as the rent would have fallen due if this lease had continued, deducting from the original of each payment for a given period, as provided herein, the net amount realized during the last preceding similar period of reletting as aforesaid. And the Tenant does further waive for itself and all persons claiming under it all right to redeem the premises (under Secs. 1437 and 1438 of the Civil Practice Act of the State of New York, or otherwise) after a warrant to dispossess shall have been issued or after a judgment in an action of ejectment shall have been made or entered, unless such right shall be exercised within thirty days after the warrant or judgment respectively shall have been issued or entered, respectively.

13. It is agreed that, in case of damage by fire or the elements, the Tenant shall give immediate notice thereof in writing to the Landlord, and, if a part only of the said building shall be damaged, but not so as to render the premises wholly untenable, the rent shall abate proportionately and the Landlord shall commence within fifteen (15) days after notice to repair the same at its own cost and expense, and complete said repairs with due and reasonable diligence; if the damage shall be so extensive as to render the said building wholly untenable, the rent shall cease from the time the Landlord shall be notified by the Tenant of such damage until the said building is restored to a tenable condition and after the said building is restored to a tenable condition, the rent shall begin again to run and be payable as before the damage; but, in case the said building shall be totally destroyed by fire or the elements, or the damage shall be so great that it will be necessary to rebuild the entire building or erect a new building on the site, the rent shall be apportioned pro rata and paid up to the time of such destruction or damage, and upon such payment being duly made by the Tenant, this lease shall come to an end. The Tenant hereby expressly waives the provisions of Section 227

of the Real Property Law relating to the destruction of the demised premises by fire or the elements.

14. The Tenant covenants and agrees that it will not make any alterations, additions or improvements in the demised premises, without written consent of the Landlord, and that the said Landlord, its agents and other representatives shall and may have the right at all reasonable hours to enter into or upon the demised premises or any portion thereof for the purpose of examining the same or of making such repairs or alterations therein as the Landlord may see fit voluntarily to make for the safety or preservation thereof.

15. The Tenant covenants and agrees that it will not encumber or obstruct or permit to be encumbered or obstructed the sidewalk in front of the demised premises, and that it will keep the said sidewalk in good repair, and free from snow and ice.

16. It is agreed that the Landlord shall not be liable for any damage or injury by water which may be sustained by the Tenant, its agents or employees, or for any damage or injury resulting from the negligence or improper conduct of the Tenant, or from the breakage, leakage or obstruction of the Croton water or soil pipes or for other leakage in the demised premises or any part thereof and the Tenant agrees to hold the Landlord harmless from any and all costs and damage in respect to the matters provided for in this clause.

17. It is agreed that the Tenant may bring into and use such dynamos, electric wires and other electrical apparatus in and about the premises as are or may be usual or suitable in the conduct of a garage, provided that the Tenant shall obtain written authority from the Fire Underwriters, the Fire Department or any other body, official or otherwise, whose consent may be necessary to continue the validity of the policies of fire insurance that may be placed on said premises based on its use as a garage, and shall present evidence of such written authority to the Landlord if and when requested by him.

18. The Tenant covenants and agrees that this lease shall be at all times, during said entire term, subject and subordinate in lien to the lien of any mortgage or mortgages not to exceed a total of which the Landlord or any subse-

quent owner of the demised premises shall make covering said premises, and to any and all advances to be made thereunder, and to the interest thereon, and the said Tenant further agrees for itself, its successors and assigns, to execute, acknowledge and deliver, upon demand, all such agreements on its part as shall be necessary to carry out the intention of this provision.

19. The failure of the Landlord to insist upon strict performance of any of the covenants or conditions of this lease or to exercise any option herein conferred in any one or more instances, shall not be construed as a waiver or relinquishment for the future of any such covenants, conditions or options, but the same shall be and remain in full force and effect.

20. It is agreed that no surrender of the premises or of the remainder of the term herein, shall be valid unless accepted by the Landlord in writing.

21. All notices to the Tenant or the Landlord herein provided for shall be served either personally or by mailing the same addressed to the Landlord or Tenant, respectively, at their last known place of residence.

22. The Landlord hereby covenants that the Tenant on paying the rent above reserved and performing the covenants and agreements aforesaid on its part, shall and may, at all times during the term aforesaid, peaceably and quietly have, hold and enjoy the said demised premises.

23. It is agreed that the provisions, covenants and conditions hereof shall bind and enure to the benefit of, the respective parties hereto and their successors and assigns.

24. It is agreed that the Tenant shall have the option to renew this lease for a period of ten (10) years upon the same terms except as to rental, which shall be agreed upon between the parties and if they are unable to agree, to be determined by arbitrators, one to be selected by each party, and if they cannot agree to be fixed by a third arbitrator selected by the two. If the Tenant intends to exercise this option, it will give written notice to this effect at least nine months prior to the expiration of the original term of the lease.

Long-time Lease with Provision for Erection of Building by Tenant and Index to Clauses

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THIS INDENTURE made.....between.....
hereinafter referred to as the "Landlord," and.....,
hereinafter referred to as the "Tenant" WITNESSETH.

That the Landlord for and in consideration of the rents hereinafter reserved and of the agreements, stipulations and covenants herein given, expressed and contained on the part and behalf of the Tenant to be paid, kept, performed and fulfilled, have granted, demised and leased and by these presents do grant, demise and lease unto the Lessee the premises situated in....., known and described as follows, to-wit:

.....

TO HAVE AND TO HOLD the said premises, with the appurtenances thereunto belonging, unto the Tenant for and during the term of.....years, commencing on.....and ending....., unless said term shall be sooner terminated or thereafter extended, as herein provided, the Tenant yielding and paying rent therefor as hereinafter set forth.

1. *Covenant of Title.* The Landlord covenants and agrees

with the Tenant, that at the time of the en sealing and delivery of this Indenture, the "Tenant" is seized of the said demised premises as of a good, sure, perfect, absolute and indefeasible estate of interitance in the law in fee simple,

2. *Rent.* The Tenant agrees and covenants to pay to the Landlord at as they may from time to time designate in writing, the following rent, to-wit:

The Tenant further agrees and covenants to pay the said rent in equal portions in advance on the first (1st) day of, in each of the said years.

3. *Gold Coin.* The Tenant further agrees and covenants to pay all of said rent, as the same shall become due, in gold coin of the United States of America of the present standard of weight and fineness or its equivalent in standard gold coin of the United States of America at the time of payments. It is agreed that the acceptance of anything else in payment of any instalment or instalments of such rent, shall not be construed or considered to be a waiver on the part of the Landlord of the right to demand payment of any other unpaid instalment or instalments of such rent in standard gold coin of the United States of America, as hereinabove specified.

4. *Demands.* It is agreed that it shall not be necessary for the Landlord to demand said rent or any other payment or payments of money required to be made under the terms of this Indenture, but the Tenant shall pay each and every instalment of the rent and other payments as the same shall become due to, or to any bank, trust company or other place in said City as may be designated from time to time in writing by the Landlord.

5. *Existing Buildings.* The Tenant acknowledges that it has examined and knows the present condition of said demised premises and the building now thereon and that no representations as to the said demised premises or as to the condition or repair thereof were made by the Landlord or anyone on their behalf prior to the execution of this Indenture.

If, prior to, any of the buildings or improvements now on said demised premises shall be condemned and removed, or destroyed by fire or other casualty, in whole or in part, whether insured or not, this Indenture and the obligation of

the Landlord and the Tenant hereunder shall not be affected, modified or changed. Prior to....., the Tenant, at its own expense, may insure its interest in said buildings for the difference in amount between the insurance carried thereon by the Landlord and the insurable value of said buildings.

The Tenant agrees and covenants, however, that if there are any building or buildings on said demised premises on, it will keep the same in as good condition as they then shall be, ordinary wear and tear excepted, until the Tenant begins the erection and construction of the new fire-proof building herein mentioned.

6. *New Building.* The Tenant further agrees and covenants that within the time hereinafter stipulated it will at its own cost, risk and expense, remove the building or buildings, fixtures and improvements that may then be on said demised premises, which buildings and improvements are hereby granted to it upon such removal, and will build, construct, complete, fully equip and finish a....., shall cost not less than....., and shall be of the actual value of,; further, that such building shall be completed and ready for occupancy on or before....., and when completed shall be free from all mechanics' or other liens; and further, that the Tenant shall, upon demand, furnish to the Landlord full and satisfactory evidence in writing of the actual cost of said building and of the payment therefor, and that said building is free and clear of all mechanics' and other liens and from liability thereto arising from the construction or equipment of said building. Provided, that in case the Landlord shall be delayed in delivering possession of said demised premises to the Tenant until after....., then the time on or before which the Tenant is obligated as hereinbefore provided to erect a.....completed and ready for occupancy,....., shall be correspondingly extended, it being the intention of the parties that the Lessee shall have a period of.....years after obtaining full and complete possession of the demised premises within which to complete and fully equip the.....building hereinbefore mentioned and provided for; and further, in case the Landlord shall be delayed in delivering possession of said demised

premises to the Tenant until after, the Tenant shall not be obligated to pay rent during such period of delay.

7. *Security.* The Tenant further agrees and covenants to furnish and deliver to the Landlord at the time of the execution of this Indenture a bond with sufficient and satisfactory surety or sureties, to be approved by said Landlord, running to said Landlord, in the sum of Fifty Thousand Dollars (\$50,000), conditioned that the Tenant will build, construct and fully equip the new fire-proof building herein provided for on said demised premises in the manner and in all respects as required by the terms of this Indenture, and will fully pay for the same; said bond shall remain in full force and effect until the erection and final completion of said new fire-proof building by the Tenant and until the same shall have been fully paid for and be free and clear of any and all mechanic's, labor and material men's liens, as herein provided; and said bond shall further provide that, in case of default of the Tenant, said sum of, shall be paid to the Landlord, his legal representatives and assigns, as liquidated and ascertained damages, and not as a penalty or a penal sum or in the nature thereof. Upon full performance of the conditions of said bond as herein provided, the Landlord upon demand by the Lessee shall release and surrender such bond.

8. *Subsequent Buildings.* The Tenant agrees and covenants that the new fire-proof building when erected on said demised premises, as herein provided, and any building or buildings thereafter at any time thereon shall not be removed or torn down in whole or in part unless the Tenant shall first agree in writing to replace or restore said building or buildings with one of equal or greater value and of the same or of better quality and construction than the said new fire-proof building hereinbefore described, and the Lessee at the same time and before beginning such building operations will furnish and deliver to the Landlord a good and sufficient bond or other security satisfactory to the Landlord, upon the same general terms and conditions as the bond hereinbefore described, in an amount not less than

The Tenant further covenants and agrees that said new building and any building or buildings thereafter built upon

said demised premises shall be constructed and maintained in compliance with the laws of the State of and the fire, building and health ordinances and rules of the City of, or the municipality having jurisdiction thereof, and shall be built under the inspection and subject to the lawful requirements of the Building Department of such municipality, or other officer authorized by law to inspect or make rules covering the erection and inspection of buildings.

The Tenant hereby expressly assumes full responsibility for all damages and injury which may result to any person or persons or to adjoining property by reason of the excavation for, and the erection, construction and maintenance of said building or buildings, and agrees and covenants to hold the Landlord harmless from any such claim or claims.

It is agreed that should the Tenant be delayed in any of the building operations provided for by this Indenture by any fire, strike, riot, war, insurrection, by the act of God, or by any other cause beyond the control of the Tenant, the time for the completion of said building shall be extended by the length of such delay, anything herein to the contrary notwithstanding; provided, however, that written notice of such delay and the cause and circumstance thereof shall be delivered to the Landlord within days after the commencement of such delay, otherwise no allowance or extension of time shall be claimed or granted because of such delay.

The Tenant agrees and covenants that in the event of the abandonment or non-completion of any building or improvements upon said demised premises undertaken by it, or in the event of its failure to complete and finish the same conformably to all the requirements of this Indenture, then the Landlord shall have the option, but without any obligation so to do and without prejudice to any other rights in consequence of such default, may complete or finish such building or improvements at the expense and cost of the Tenant and as nearly as practicable and proper according to plans and specifications then being worked under, provided that the same shall be accessible to the Landlord and to those whom they may employ.

Nothing herein shall prevent the Tenant in good faith from contesting in the courts the claim or claims of any person or

persons growing out of the erection of such building or buildings and the postponement of such payment until such contest shall be decided shall not be a violation of this Indenture, provided, however, that, if such claim or claims so contested and thus sought to be postponed, shall exceed in the aggregate, then the Tenant, before seeking to contest and postpone such claims, shall furnish to the Landlord a satisfactory bond or other security conditioned upon the payment of such disputed claim or claims, if their validity be finally established; such bond or security shall be given in addition to the one herein provided for on the ensembling of this Indenture.

Nothing contained in this Indenture shall be taken or construed to authorize the Tenant to do any act or make any contract so as to encumber in any manner the title of the Lessors to the land hereby demised or to create any claim or lien upon the interests of said Lessors in said building, it being expressly agreed and covenanted that all the expenses and costs of the erection, equipping, repairing, improving and altering of the said building or buildings by the Tenant shall be promptly paid by the Tenant, as required by the terms of its contract therefor.

9. *Liens.* The Tenant agrees and covenants that it will make no contract or agreement for the construction, alteration or repairing of any building or other improvements upon said demised premises, which shall call for the payment of more than, in amount, for the purchase of material to be used or for work and labor to be performed in and about the repair to be made or construction of any building to be erected on the premises in this Indenture, unless such contract or agreement be in writing, and contain an express waiver on the part of such contractor of any and all claim for mechanic's or material men's liens against the demised premises or improvements, including those to be made and erected thereon under the terms of this Indenture.

10. *Use, Repair and Occupation.* The Lessee further agrees and covenants that it will at its own expense keep and maintain such new fire-proof building and every building, fixture and improvement which may at any time be situated on said

demised premises during the term of this Indenture, and all appurtenances thereunto belonging or appertaining thereto, including all fire escapes, sidewalks, steps, areas, vaults and all excavations in, under or upon said demised premises (in so far as the Tenant or anyone claiming or holding under or through it, or any occupant of said demised premises may have control of same), in good and substantial repair, and in a clean and sanitary condition, and will always keep and maintain, as well as use and occupy, said demised premises and every building or improvement at any time thereon, during said term, as well as the sidewalks and streets in front of and around such building and premises, in conformity to and in compliance with all the orders, ordinances, rules and regulations of all Federal, State and City authorities having jurisdiction there of, and Statutes and laws of the State and of the United States and of any lawful authority applicable to or affecting the same, and not for any purpose calculating or tending to injure the reputation thereof or of the neighboring property, or for immoral purposes; and the Tenant agrees and covenants that it will not use, commit, permit or suffer any violation of such ordinances, rules, regulations, Statutes or laws, and will protect, indemnify and forever save and keep harmless the Landlord from and against any penalty, fine, damage, expense or charge imposed, assessed or incurred for any violation or breach of any such ordinance, regulation, rules, Statutes or laws occasioned by the act, neglect or omission of the Tenant or by any occupant of said demised premises, and will also protect and indemnify and forever save and keep harmless the Landlord from and against any loss, cost, damage and expense, including all reasonable attorney and counsel fees, occasioned by or arising out of any breach or default in the performance and observance of any provisions, conditions, covenants and stipulations of this Indenture, or occasioned by or arising out of any accident, wrong or other occurrence causing or inflicting injury or damage to any person whomsoever, or whatsoever, happening or done in or upon or about said demised premises, or due directly or indirectly to the construction, tenancy, use, occupation or intrusion on or about said premises, or in front or around thereof, or upon the sidewalks or streets adjoining

the same, by the Tenant or any person or persons occupying, holding or claiming by, through or under it.

11. *Destruction.* The parties agree and covenant that damage to or destruction of any building or buildings on said demised premises, at any time, by fire or any other casualty whatsoever, shall not work a termination of this Indenture or authorize the Lessee or those claiming by, through or under it, to quit or surrender possession of said demised premises or any part thereof, and shall not release the Lessee in any way from its liability to pay the Landlord the rent hereinbefore provided for, or from any of the agreements, covenants or conditions of this Indenture. In the event of loss, destruction or damage to the new building to be erected as hereinafter provided, or to any building or buildings thereafter erected upon said demised premises, the Tenant agrees and covenants to rebuild or restore a like building of equal strength, value and quality to the one destroyed, injured or damaged, as often as such destruction, loss or damage may occur, commencing such rebuilding or restoring within.....and completing the same withinthereafter respectively or as much sooner as it reasonably can do, and will pay therefor as herein provided so that said premises and the building thereon shall always be free and clear from mechanics' and other liens, as herein provided.

12. *Insurance.* The tenant agrees and covenants that from and after....., and until it commences to build the new fire-proof building on said demised premises, as herein required, it will at all times, at its own expense, keep any building or improvements situated thereon on insured against loss or damage by fire, lightning or tornado, for not less than the amount for which said buildings or improvements shall be assessed for the purposes of taxation for the year....., if insurable for such amount, which said insurance shall be placed in solvent, incorporated insurance companies, reasonably approved by the Landlord, each company being then licensed to do business in the State of The tenant agrees and covenants that, after it shall have commenced to build the new fire-proof building or buildings, as herein provided, it will at all times, at its own expense, keep the building or buildings, whether partially or

wholly constructed, situated on said demised premises, insured against loss or damage by fire, lightning, tornado and boiler or other explosions (if boiler or boilers are used in said building or buildings) for not less than per centum of the actual value thereof, exclusive of the value of all stone, concrete and brick foundations below grade and all underground piping and piling, in solvent, incorporated insurance companies, reasonably approved by the Lessors, each company being licensed to do business in the State of Each and every of such policy or policies of insurance on any of the buildings or improvements at any time situated on said demised premises shall provide that the loss, if any, shall be paid to, as Trustee, in trust for the Landlord and the Tenant as their respective interests may appear; and all such policies shall be deposited with the Landlord. The Landlord reserves, the right to change the Trustee upon giving written notice to the Tenant. Such successor, however, at all times shall be an incorporated trust company in, unless the Landlord and the Tenant shall in writing otherwise agree.

The Tenant agrees and covenants that such policies of insurance shall provide that the same shall not be invalidated by any act or neglect by said Tenant or of any other person without the knowledge and consent of the Landlord, provided such provision can be procured. Such policies of insurance shall be held by the Landlord as additional security for the performance by the Tenant of all the agreements, stipulations and covenants of this indenture.

The Tenant agrees and covenants that it will not do or permit to be done in, to or about the said demised premises, any act or thing which will invalidate any insurance upon or about, or in any manner pertaining to said building or buildings now located thereon or hereafter erected thereon; and, further, the Tenant will not permit any building or improvements at any time to be put, kept or maintained on said premises in such condition or so occupied that the same will not be insurable.

13. Payment of Premiums. The Tenant agrees and covenants to furnish the Landlord with receipted bills or other evidence

showing the payment of premiums on all policies on the building or buildings at any time on said demised premises.

Provided always that if the Tenant shall neglect to insure or keep insured the building or buildings on said demised premises, as herein required, the Landlord may without notice to the Tenant renew or procure such insurance; and the premiums paid therefor, together with interest thereon at the rate of per centum per annum from the date of payment thereof by the Landlord, shall be and become due and payable to the Landlord as so much additional rent at the next rent date after such payment; the Landlord shall give immediate notice to the Tenant that they have renewed or procured such insurance and the amount of the premiums they have paid therefor.

14. *Destruction.* The Tenant agrees and covenants that within days after any fire, injury or casualty happening to any of the building or buildings, or any part thereof, in said demised premises, it will have plans and specifications prepared by an architect or architects of well known and reputable standing for the restoring or rebuilding of such building or buildings in such manner as herein specified, together with an estimate of the cost thereof. If the estimated cost thereof shall exceed the amount of insurance money received or to be received by the Trustee under the provisions of this Indenture, less the cost and expenses of collecting and disbursing such insurance money, then and before the said Trustee shall be called upon to pay out any of such insurance money, the Tenant shall provide other funds to pay for such restoring or rebuilding until the balance remaining to be paid for such restoring or rebuilding upon such plans and specifications shall approximately equal the insurance money in the hands of the said Trustee, which shall thereupon pay out any such insurance money so received by it from time to time upon the certificates of said architect or architects of well known or reputable standing for the necessary cost of completing such rebuilding or restoring.

In the event that the estimated cost of such restoring or rebuilding under such plans and specifications shall not exceed such insurance money received or to be received by the

said Trustee, less the cost and expenses of collecting and disbursing the same, then such insurance money as may be received by said Trustee shall be paid out by the said Trustee from time to time upon the certificates of an architect or architects of well known and reputable standing, and upon the completion of the rebuilding or restoring of such building or buildings free from and discharged from all liens of mechanics or material men, any insurance money then remaining in the hands of the said Trustee shall be paid to the Tenant.

It is agreed that neither the Landlord nor said Trustee shall be responsible for the collection or non-collection of any insurance money in any event. The Lessors shall not be responsible for any insurance money which shall come into the hands of the said Trust Company. The Landlord shall not be obliged to have any such insurance money invested or placed at interest, but any interest or income received thereon may be applied, used or paid as part of the principal thereof, as herein specified.

15. *Damages.* Provided always, that if the building or buildings at any time situated on said demised premises shall not be rebuilt or restored in the manner and within the time in this Indenture specified, then and in such case, all insurance money received or recoverable on said policies of Insurance (less such sums as shall have been paid out by said Trustee on architect's certificates as herein provided) shall belong to and be paid to the Landlord as liquidated and agreed damages by reason of the failure of the Tenant so to rebuild or restore such building or buildings.

The Tenant further agrees and covenants that if this Indenture is forfeited for any reason then all such policies of Insurance and all such insurance money due or to become due at the time of said forfeiture, shall belong to the Landlord, free and clear of any claim or interest thereon or thereto on the part of the Tenant or anyone claiming through or under it, but nothing herein contained shall be construed as in any manner releasing the Tenant from its obligation to restore or construct the building or buildings as herein provided, nor as a waiver by the Landlord's rights to insist upon the full performance by the Tenant of the terms, conditions and

covenants in this Indenture contained or on its part to be performed.

16. *Taxes.* The Tenant agrees and covenants to pay and discharge all water rates, taxes, assessments, levies and other charges, general and special, ordinary and extraordinary, of whatever name, nature and kind, which are or may be during said term levied, assessed, imposed and charged upon the land or the premises hereby demised and leased, or upon the building and improvements now thereon or hereafter to be built or made thereon, and all which may be levied, assessed, imposed or charged upon the leasehold estate hereby created and upon the reversionary estate in said premises during said term hereby granted. If at any time during the term of this Indenture, the present method of taxation or assessment shall be changed so that the whole or any part of the taxes, assessments, levies or charges now levied, assessed and imposed on the said real estate and improvements thereon, shall be transferred to the rentals received from the said real estate, the Tenant agrees and covenants to pay such taxes and assessments, whether levied on said real estate in whole or in part, or against said rentals in whole or in part, and if levied partly on said real estate and partly on the rentals, to pay such proportionate share of taxes and assessments levied and assessed on such rentals as shall proportionately relieve the taxes and assessments on said real estate, it being the intention of all parties hereto that the Landlord shall receive the rents reserved herein without deduction of taxes, assessments, levies or charges in respect of the real estate and improvements thereon, but that the Tenant shall not be obligated to pay full taxes and assessments on the said real estate and improvements and also on the said rentals.

17. *Tax Receipts.* The Tenant agrees and covenants to obtain tax receipts of all taxes and assessments above described, paid by it on said demised premises; such taxes and assessments may be paid in the name of the Tenant; and the Tenant agrees and covenants to deliver said receipts to the Landlord within five (5) days after the said last day allowed by law for the payment of such taxes and assessments.

18. *Contesting Taxes.* If, however, the Tenant, in good

faith, shall desire to contest the validity or amount of any tax, levy, assessment or water rate herein agreed to be paid by it, the Tenant shall notify the Landlord in writing of the intention to contest said tax, levy, assessment or water rate, and at the same time shall deposit with Trust Company or any other trust company in the City of authorized by law to execute trusts, an amount of money equal to the amount of such tax, levy, assessment or water rate about to be contested; such deposit shall be held by said Trust Company as security for the payment of such tax, levy, assessment or water rate in the event that the Tenant shall fail to pay such water rate, tax, levy or assessment after a final determination finding such tax, levy, assessment or water rate valid; provided that said Trust Company upon demand by the Tenant in writing shall deposit said money in court as a tender of the payment of the said tax or assessment so contested to be held there pending the final termination of any such contest; and further provided that if the tax, levy, assessment or water rate so contested shall be declared invalid by such final determination, and not a lien, charge or imposition upon the said demised premises or any part thereof, then said deposit shall be refunded to the Tenant.

19. *Payment by Lessors.* The Landlord, except as herein-after provided, shall have the right at all times during the term of this Indenture to pay any water rates, taxes, assessments or other charges levied or imposed on said demised premises and the reversionary interest therein remaining unpaid after the same have become due and payable, and to pay, cancel and clear of all water rates, taxes, assessments, tax sales, liens, charges, impositions and claims upon or against said demised premises or any part thereof or the reversionary interest therein, or to redeem said premises from the same or any of them from time to time, and the amount paid, including the reasonable expenses of the Lessors, shall be so much additional rent due from the Lessee at the next rent date after any such payment, with interest thereon at the rate of per annum from the date of payment thereof by the Landlord until the repayment thereof by the Tenant. It is agreed that, if the Landlord exercise the option to advance or pay any such

water rates, taxes, assessments, impositions or other charges, or pay, cancel or clear of any tax sales, tax deed, liens, charges, impositions or claims upon or against said demised premises or the reversionary interest thereof, it shall not be obligatory upon them to inquire into the validity of any such water rate, tax, assessment, imposition, levy or other charge, or of any such tax sale, lien or deed, unless the Lessee shall have given the notice and made the deposit provided for in the paragraph next preceding.

20. *Landlord's Liens.* The Tenant agrees and covenants that the whole amount of the rent reserved and hereby agreed to be paid by it and each and every instalment thereof, and the amount of all the water rates, taxes, assessments, levies and other impositions, insurance premiums to be discharged and paid by it and which may be paid by the Landlord under the provisions of this Indenture and all costs, attorneys' fees and expenses which may be incurred by the Landlord in enforcing the provisions of this Indenture, or on account of any delinquency of the Tenant in observing any of the conditions, covenants and stipulations of this Indenture, shall be and they are hereby declared and agreed to be a valid and first lien upon the building or buildings, fixtures, machinery and other improvements which may at any time be situated or located upon the said demised premises and upon the interest of the Tenant in the premises hereby demised. It is agreed, and notice is hereby given and accepted, that no transfer, assignment, sublease, mortgage, judgment, mechanic's or other lien, by or against the Tenant or its interest in the said demised premises, shall in any degree or manner affect the right, title, interest or remedies of the Landlord in or against the said demised premises and in the building or buildings at any time situated thereon, with the fixtures and improvements thereof.

21. *Involuntary Transfer.* The Tenant agrees and covenants not to permit any transfer by operation of law of the interest in said demised premises acquired through this Indenture, or any other involuntary alienation of the same, prior to the erection, completion and payment of said new building as herein provided, and will not permit its interest in this Indenture to become incumbered (excepting by way of mortgage or

deed of trust in the nature of a mortgage in the manner and under the conditions herein expressly provided).

22. *Assignment.* The Tenant further agrees and covenants that it will not assign this Indenture or its interest therein, unless without the previous, express, written consent thereto of the Landlord.

(A) At the time of such assignment the building then standing upon said demised premises shall be in a safe, tenantable and good condition, order and repair, and shall otherwise conform to the requirements and covenants in respect thereof in this Indenture contained;

(B) At such time the Tenant shall not be in arrears of rent, nor in default in the performance or observance of any of the covenants, provisions or conditions of this Indenture;

(C) The assignment shall be made to a reputable and financially responsible person or persons; or to a body corporate, legally, properly and in good faith organized, existing and doing business under the laws of the State of or of some State of the United States of America or under Federal Law, duly authorized and licensed to do business in the State of, duly authorized and empowered to assume this Indenture, and all the provisions, obligations and conditions hereof, solvent and having a capital stock fully paid in and wholly unimpaired of not less than Dollars;

(D) The assignee or the purchaser, including the purchaser at a foreclosure sale of a mortgage or trust deed as herein provided, at the time of the assignment, shall properly make, execute, deliver and acknowledge a valid and binding deed, directly enforceable by the Tenant, wherein such assignee or purchaser shall assume and agree personally to pay all the rent herein reserved and expressly assume and agree to perform, keep, observe and be bound by all the covenants, provisions and conditions of this Indenture, including these;

(E) Such deed, or a properly executed duplicate thereof, acknowledged in the same manner as other deeds of real estate, shall immediately upon its execution and acknowledgment be filed for record in the office of, or other proper office established for such purpose; and,

(F) Either the original or such duplicate together with a

written statement of the assignee's or purchaser's residence and place of business, (giving street and number, if the street be named and numbered) shall be delivered to the Landlord;

(G) Such assignment shall be made to effect and carry out an absolute sale in good faith of said leasehold estate or interest to the intended assignee, in which case only shall such assignment in any event be permitted. All of said provisions and conditions, (lettered as aforesaid, A to G, both inclusive) shall be conditions precedent to any right on the part of the Tenant to assign. The conditions of this provision shall be continuing conditions, and shall apply to every successive assignment under this Indenture; and the noninsistence upon or waiver of them, or any of them, in any one case shall not be taken to be a waiver in any other case, nor shall consent given in any one case be held to extend to any subsequent case.

If the said new fire-proof building shall have been built, completed and paid for as provided by this Indenture, and if at any time or times any such assignment shall be made by the Tenant conformable to all the provisions and conditions under which any such assignment, as aforesaid, is permitted, and if all of such conditions precedent to the right of the Tenant to assign shall have been performed and observed, then and from thenceforth the Tenant so assigning shall be released from all liability thereafter arising or accruing under this Indenture, but under no circumstances shall the Tenant be otherwise released, nor shall the acceptance of rent from any assignee or purchaser in any case operate or be taken to work or effect such release. Every assignee shall be subject to and be bound by all the provisions and conditions of this article with respect to any future or further assignment, as well as to all the other provisions, agreements, obligations and conditions of this Indenture.

23. Accepting Rent. The Tenant further covenants and agrees that if it shall make any assignment of this Indenture in any way or manner not authorized by the terms hereof, the acceptance by the Landlord of any rent from any person claiming as assignee, sub-lessee, or otherwise, shall not be construed as a recognition of any such assignment or sub-lease or as a waiver of the rights of the Landlord hereunder to collect any

rent from the Tenant, it being expressly understood that the Landlord may at any time accept rent and money due upon this Indenture from anyone offering to pay the same without thereby acknowledging the person or persons so paying as the tenant or tenants in place of the Tenant, or without thereby recognizing the claim under which such person or persons shall offer to pay said rent or other money, and without thereby releasing the Tenant from the obligations and covenants in this Indenture.

24. Pledge or Mortgage. It is agreed that whenever the Tenant shall not be in arrears of rent nor in default in the performance or observance of any of the covenants, provisions or conditions of this Indenture, it may mortgage (or convey by deed of trust in the nature of a mortgage), its estate or its interest to secure a bona fide loan or loans of money then actually made, or then actually about to be made to the Tenant, or to extend or renew the same; provided, however, always, that no mortgagee or trustee, nor anyone who claims by, through or under such mortgage or deed of trust in the nature of a mortgage shall by virtue of such mortgage or deed of trust acquire any greater or more extended rights than the Tenant has under this Indenture, and, provided further, that any such mortgage or deed of trust and the rights and interest of the mortgagee or trustee, and of all persons who claim by, or through or under such mortgage or deed of trust, shall be in every respect subject, subservient and subordinate to all the conditions, provisions, stipulations, requirements, covenants and obligations of this Indenture, and the rights, powers and privileges of the Landlord thereunder, as well as in respect of any building or improvements from time to time upon said premises or otherwise; and provided further, that no person acquiring title to the leasehold estate or interest, or any part thereof, created by, under or through this Indenture, shall assign or transfer the same otherwise than as under the conditions and mode herein expressly permitted to the Tenant. The Tenant agrees and covenants that, excepting as aforesaid and under the conditions aforesaid, and excepting for the purpose aforesaid, it will not mortgage or encumber this Indenture, or its interest acquired thereunder.

The Landlord agrees that if the leasehold estate hereby demised shall be conveyed by mortgage or deed of trust by the Tenant as herein provided, and if the Landlord shall be notified in writing of such conveyance and of the name and address of the mortgagee or trustee therein, then notice of the default in the performance of the covenants in this Indenture contained, of the same kind and in the same manner and for the same length of time as are hereby required to be given to the Tenant, shall also be given to such mortgagee or trustee.

25. Signs. It is agreed that the Landlord may within six (6) months next preceding the expiration of the term of this indenture place signs upon the walls, doors or windows of the building or buildings upon said demised premises, advertising that the said premises are for rent or for sale, which said notice or notices shall remain thereon without hindrance or molestation.

26. Inspection. The Tenant agrees and covenants that the Landlord or agents at all reasonable times and during all reasonable hours shall have free access to said demised premises, and through any building or structure that may at any time be thereon, or any part thereof, for the purpose of examining or inspecting the conditions of the same or of exercising any right or power reserved to the Landlord under the terms and provisions of this Indenture.

27. Joint Signatures. The parties agree and covenant that the joint signature of the Landlord and the Tenant shall be required in all cases to any petition, contest or other instrument in writing whereby any person or corporation may directly or indirectly acquire the right to use or occupy any portion of the street or streets upon which said demised premises abut; that whenever any law now or hereafter in force requires the consent or petition of the owner of said demised premises for any purpose whatsoever, the joint signatures of the Landlord and the Tenant shall be necessary; and the Tenant hereby expressly agrees and covenants that it will not in any case sign any such petition, consent or other instrument in writing requiring the joint signatures of the Landlord and Tenant for the purposes last above mentioned, unless such petition, consent or other instrument in writing shall first be signed by the Landlord.

28. *Suits.* The Tenant agrees and covenants that in case at any time any action at law or in equity or other proceeding shall be begun against the Tenant or against said premises to secure or recover possession thereof, or in any wise affecting the title thereto or the interests of the Landlord therein, then the Tenant upon notice or knowledge of said action, injunction or other proceeding, will forthwith give written notice thereof to the Landlord.

The Tenant agrees and covenants that in case the Landlord shall, without default, be made parties to any litigation commenced by or against the Tenant, then it will pay all costs and reasonable attorneys' fees incurred by or imposed on the Landlord by or in connection with such litigation; and, further, that the Tenant will also pay all costs and reasonable attorneys' fees which may be incurred or paid by the Landlord in enforcing any of the covenants, agreements and stipulations of this Indenture, and all such costs and attorneys' fees when paid by the Landlord shall become at once a first and valid lien upon the buildings and improvements on said demised premises and upon the leasehold estate hereby created, and shall be so much additional rent due on the next day when rent is due and payable after such payment or payments, together with interest at per centum per annum from the day of payment and shall be collected as other rent specifically herein reserved.

29. *Repossession.* The Tenant agrees and covenants that if default shall be made by it, its successors or assigns, in the payment of the rent herein reserved, and such default shall continue for days after notice thereof in writing to the Tenant, its successors or assigns, or if default other than in the payment of said rent shall be made in the agreements, stipulations and covenants, or any of them herein contained to be kept, observed, performed or fulfilled by the Tenant, its successors and assigns, and said default shall continue for days after notice thereof in writing to the Tenant, its successors or assigns, then and in either or any such event, it may and shall be lawful for the Landlord at any time thereafter, without, however, waiving or postponing any right against the Tenant or the right to

enforce any bond or other security given for the faithful performance of the covenants and agreements herein contained, to enter into or upon the said demised premises, repossess, expel the Tenant or anyone holding under it, its successors and assigns, and remove their effects forcibly, if necessary, without prejudice to any rights or remedies whether by statute or common law which might otherwise be used, for recovering arrears in rent or for breach of any term, covenant or condition of this Indenture, and such entry, repossession or such expulsion or removal, whether by direct act of the aforesaid Landlord or through the medium of legal proceeding for that purpose instituted, shall not terminate this Indenture nor release the Tenant from any liability for the payment of any rent stipulated to be paid by this Indenture or the performance or fulfillment of any other condition or covenant provided herein, whether before or after such entry, repossession, expulsion or removal by the Landlord, and in case of such entry by the said Landlord they may lease or relet the said premises in whole or in part, or the buildings and improvements thereon, to any tenant or tenants that may be satisfactory to them, and for such term or terms and at such rent or rentals, terms and conditions as the Landlord may deem best, and the acceptance of any tenant or the making of any such lease by the Landlord shall be conclusive of the proper discretion so vested in the Landlord. In case of such re-entry, the Landlord shall use and apply any and all rents so received by them as follows:

(A) To the payment of the cost, maintenance and operation of the demised premises and the buildings and improvements thereon, including a reasonable compensation to the said Landlord and agents, attorneys or servants, for services in such management:

(B) To the payment of all taxation rates, assessments, impositions and other charges or expenses herein covenanted to be paid by the Tenant;

(C) To the payment on account of the aforesaid instalment of rent covenanted to be paid by the Tenant from time to time as such rent accrues, with interest at the rate of per centum per annum from the time the same becomes due.

And in such event, the Tenant covenants and agrees to pay to the Landlord on.....difference between the current.....rent herein stipulated to be paid, with interest at the rate of.....per centum per annum from the first (1st) day of such.....and the net amount of rent received by the Landlord during such..... for said premises to apply as aforesaid to the.....instalment of rent covenanted to be paid by the Tenant.

The Landlord, shall not be under any obligation to enter into possession of said demised premises during said time and the foregoing provisions regarding the possession and management of said building and improvements and the disposition of rents thereof by the Landlord is made to operate only in the event that the said Landlord shall elect to enter into possession of the same as aforesaid.

30. Termination and Notice. Provided always and this Indenture is made on the express condition that if default shall be made by the Tenant, its successors or assigns, in the payment of the rent herein reserved, as aforesaid, and such default shall continue for.....days after notice thereof in writing to the Tenant, its successors or assigns, or if default other than in the payment of said rent shall be made in the agreements, stipulations and covenants, or any of them herein contained to be kept, observed, performed or fulfilled by the Tenant, its successors and assigns, and said default shall continue for.....days after notice thereof in writing to the Tenant, its successors or assigns, then and in either or any such event, it may be lawful for the Landlord, to declare the said term ended, and to recover the possession of the said demised premises or any part thereof, and to expel and remove the Tenant and each and every person or persons in or upon the said demised premises or any part thereof, whether with or without process of law, using such force as may be necessary in so doing, and again to recover the possession of the said demised premises and enjoy the same as of their first and former estate.

The Tenant hereby waives all compensation whatever for the forfeiture of said term or the possession of said demised premises by the Landlord in the event of the forfeiture of this

Indenture for any of the causes aforesaid; and agrees that any notice that the Landlord may desire or is required at any time to give or serve upon the Tenant, with reference to the foregoing covenants or any other one in this Indenture, may be sent by registered mail, postage prepaid, to the Tenant at such address in the United States as shall have been last furnished in writing by the Landlord to the Tenant, or such notice may be conspicuously posted for ten (10) consecutive days at the main entrance to, or in front of, the premises demised by this Indenture, and the giving of such notice in either way above specified shall constitute a good, sufficient and lawful notice for the purpose of declaring a forfeiture of this Indenture and of all the rights of the Tenant hereunder.

Provided always, so long as the special statutory remedy now provided by Section.....of theStatutes shall remain in force in said State, then, the rights of the Landlord to recover the possession said demised premises upon termination of this Indenture as aforesaid shall be in accordance therewith, except, however, that the Tenant hereby expressly waives the provisions and benefits of said statute, entitling a Tenant to remain in possession of demised premises and to receive the rents, issues and profits therefrom during the period of redemption provided for by said Statute.

31. Remedies Cumulative. It is agreed that the various rights and remedies herein contained and reserved to the Landlord shall not be considered as exclusive of any other right or remedy but the same shall be construed as cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute; further, every power or remedy reserved by this Indenture to the Landlord may be exercised from time to time and as often as occasion may arise or as they may deem expedient. No delay or omission of the Landlord to exercise any right or power arising from any omission, neglect or default of the Tenant shall impair any such right or power or shall be construed as a waiver of any such default or an acquiescence therein. No waiver of the breach of any of the covenants in this Indenture shall be construed or held to be a waiver of any other breach or waiver or acquiescence in or consent to any further or succeeding

breach of the same covenant. In case the Landlord shall have proceeded to enforce any right under this Indenture, by entry, suit or otherwise, and such proceeding shall have been discontinued or abandoned because of a waiver, settlement or for any other reason, or shall have been determined adversely to the Landlord, then in every such case the Landlord shall be restored to his former condition and rights hereunder in respect to said demised premises and all rights, remedies and powers of the Landlord shall continue as though no such course had been taken.

It is agreed that neither the rights herein reserved nor those available to the Landlord under the law to receive, sue for or recover any rent or rents, moneys or payments, or to enforce any of the terms, provisions, conditions or covenants in this Indenture, or to prevent the breach or non-observance thereof, or the exercise of any such right or of any other right or remedy hereunder, otherwise granted, or arising, shall in any way affect, impair or control the right or power of the Landlord to declare the term hereby granted ended, and to terminate this Indenture because of any default or breach on the part of the Tenant.

32. *Extension of Term.* In case the Tenant shall have built upon the said premises and shall have kept the same renewed and in repair, as provided for by this Indenture, and shall have kept, observed and performed all of the stipulations, agreements and covenants herein agreed to be kept, observed and performed by it, then if the Landlord and the Tenant cannot agree in writing after , and before....., upon the then actual cash value (based on the estimated cost of reproduction less depreciation, including obsolescence) of all buildings then situated on said premises and built thereon by the Tenant under the provisions of this Indenture, exclusive of the value of the land, and which buildings are to remain thereon after....., and cannot likewise agree in writing after , and before , upon the then actual cash value of the land hereby demised (based on the market value thereof), then separate appraisals shall

be made at once of the actual cash value of said buildings situated on said demised premises and built thereon by the said Tenant under the provisions of this Indenture, and which are to remain thereon after....., and also of the actual cash value of said demised land exclusive of said buildings.

The said appraisals shall be made by three disinterested persons residing in the city of....., (or the municipality in which said premises are situated), who shall act as such appraisers, one of whom shall be chosen by the Landlord and one by the Tenant and these two shall select a third appraiser. A decision of the majority of them shall be binding and shall be considered as the decision of the three appraisers. In case said appraisers or a majority of them cannot agree upon such appraisals, then the Landlord and the Tenant shall appoint new appraisers in the manner herein provided for the appointment of appraisers.

If either the Landlord or the Tenant shall fail to choose an appraiser so to act after thirty (30) days' notice in writing from the other party so to choose, then the other party may apply to any Judge of theCourt or any court having general equity jurisdiction over said demised premises to appoint such appraiser, first, however, giving to the party so failing to choose ten (10) days' notice in writing of such application, and such Judge may thereupon appoint such appraiser. If, within thirty (30) days after their appointment, the two appraisers chosen shall fail for any reason to choose a third appraiser, than either the Landlord or the Tenant may apply to such Judge to appoint a third appraiser, first, however, giving ten (10) days' notice in writing to the other party and such Judge may thereupon appoint such third appraiser. Appraisers appointed by such Judge shall have the same powers and duties as if otherwise appointed as herein provided. In case of vacancy occurring in the number of the three appraisers from any cause or inability or failure of any to act, the said vacancy or position shall be filled from time to time in the same manner as the appraiser was originally appointed whose vacancy or position is to be filled.

The three appraisers so chosen shall promptly ascertain,

appraise and determine the actual cash value of all the buildings then situated on said demised premises and built thereon by the said Tenant under the provisions of this Indenture, and which are to remain on said demised premises after and the then actual cash value of the land constituting said demised premises, exclusive of the value of the buildings and improvements then situated thereon. The findings of such appraisers shall be in writing and made in duplicate; one duplicate original shall be delivered to the Landlord and one to the Tenant as soon as said findings shall have been completed. The cost of said appraisal shall be paid, one-half ($\frac{1}{2}$) by the Landlord and one-half ($\frac{1}{2}$) by the Tenant.

Within ninety (90) days after an agreement in writing shall have been made between the Landlord and the Tenant as to the said actual cash value of the said buildings standing on the said demised premises to remain thereon after and of the actual cash value of said land exclusive of the buildings, or if no such written agreement shall have been made on or before, then within days after the Landlord shall have received the aforesaid duplicate original appraisal, the Landlord hereby covenants to elect either to purchase said buildings at their agreed or appraised actual cash value, or else to extend the term of this Indenture for a term of years from to years upon the same conditions, stipulations, covenants and agreements as are contained in this Indenture, so far as the same can be applicable to the extension of the term of this Indenture, except that the annual rental to be paid by the Tenant to the Landlord during such term shall be per centum of the actual cash value of said land exclusive of the actual cash value of said buildings, as determined by said written agreement or by said appraisal.

In case the Landlord shall elect to purchase said buildings, as aforesaid, then said buildings and improvements standing on said demised land at such time, and all buildings and improvements subsequently erected thereon shall become a part of the realty and shall be the property of the Landlord, together with all insurance money available to restore any loss by fire or other casualty happening to any improvement upon said demised premises, and the Tenant shall have a lien upon

the Landlord's interest in said demised premises to secure the payment to the Tenant of the agreed or appraised value of the buildings and improvements. Upon payment of the agreed or appraised value of said buildings and improvements, the Tenant at the expiration of the present term, to-wit: on the....., shall yield up said premises in good condition and repair, together with all the buildings and improvements standing thereon; the obligation of the Landlord to tender said cash value of said buildings and of the Tenant to surrender possession at said time shall be concurrent and be performed simultaneously.

In case the Landlord shall elect not to buy said buildings, the Tenant is hereby given the option to extend the term of this Indenture for another period ofyears upon a rental at the rate ofper centum of the agreed or appraised value of the said land, exclusive of the said buildings, payable in instalments in advance as provided herein, and also upon all of the same agreements, stipulations, conditions and provisions as are contained in this Indenture, including the payment of taxes and assessments for the entire year.....

Failure of the Landlord to notify the Tenant of a decision within said.....days either to purchase said buildings or to extend the term of this Indenture as herein provided, shall be construed to mean an election by the Landlord to extend the term of this Indenture for another term of..... years. In case the Tenant then desires to accept an extension of the term of this Indenture, it shall, within.....days after the Landlord's decision not to purchase said buildings as aforesaid, give written notice to the Landlord of its decision so to renew said term, and further agrees and covenants to execute with the Landlord a suitable instrument providing for such extension within.....days thereafter. In case the Tenant shall not extend the term of this Indenture by giving such notice and by executing the extension agreement as aforesaid, then upon the expiration of the term of this Indenture all the buildings and improvements on said demised land shall revert to the Landlord free from any obligation on their part to pay any money for them.

If from any cause the appraisals of the said buildings and land shall not have been made days prior to, if there has been no written agreement of the actual cash value of said buildings and land, then the Tenant shall continue to pay rent to the Landlord on and after at the rate of per annum, and all the other provisions of this Indenture shall remain in full force and effect until the Landlord and the Tenant shall have exercised or failed to exercise their options within the time and in the manner herein provided.

If the term of this Indenture shall be extended for a further term of years as herein provided, and the annual rent to be paid by the Tenant for such extended term shall be in excess of Dollars, then the Tenant shall upon demand by the Landlord pay to the Landlord in cash the difference between Dollars and the annual rent to be paid for such extended term as herein provided. If said annual rental for such extended term shall be less than Dollars the Tenant may deduct such difference from the instalment of rent next maturing.

At the end of said second term of years, similar written agreements or appraisals shall be made and the Landlord shall again elect either to purchase all the buildings then standing upon said demised premises and erected thereon by the Tenant under the provisions of this Indenture at their then agreed or appraised value, or to extend the term for another period of years and so on until at the end of some term of years said Landlord shall have elected to purchase said buildings then standing on said demised land and erected thereon by the Tenant under the provisions of this Indenture at their agreed or appraised values, or the Tenant shall have elected not to extend such term by failing to give the notice and execute the extension agreement as aforesaid.

The Tenant agrees and covenants that at and upon the date of the expiration of the term of this Indenture, to-wit:, or if said term shall be extended, then upon the expiration of such extension, it will surrender and deliver up the above described premises and all the buildings

and fixtures of every sort, kind or nature whatsoever, in, or about said premises and under the sidewalks and streets around the same, peaceably to the Landlord, or their successors, attorneys and assigns.

If the Tenant, its agent or attorney, or the tenants on said demised premises holding under them, or any of them, or other persons, shall hold said premises, or any part thereof, after the same should have been surrendered according to the terms of this Indenture, the Tenant and such tenant or tenants and persons, as aforesaid, shall be deemed guilty of an unlawful detainer of said premises under the statute and shall be subject to fine and removal, with or without legal proceedings, and the Landlord may, without notice again recover the possession of the demised premises, and the Tenant, or other persons occupying said premises, or any part thereof, expel, remove and put, using such force as may be necessary in so doing, and the said premises repossess in the Landlord's former estate, anything herein contained to the contrary notwithstanding.

33. Parties. The Landlord and the Tenant further agree and covenant that each of the expressions, phrases, terms, conditions, provisions, stipulations, admissions, agreements, requirements and obligations of this Indenture shall extend to and bind or inure to the benefit of (as the case may require) not only the parties hereto but to each and every of the heirs, executors, administrators, representatives, successors and assigns, of the Landlord and Tenant; further, that, whenever in this Indenture, reference to either the Landlord or the Tenant hereto is made, such reference shall be deemed and construed to include, whenever applicable, also a reference to the heirs, executors, administrators, successors and assigns, of such party, the same as if in every case expressed, and all of the stipulations, admissions, agreements, conditions and covenants contained in this Indenture, shall be construed as covenants running with the land.

Lease of Co-operative Apartment

AGREEMENT, made....., between....., hereinafter called the "Landlord," and....., of

....., hereinafter called the "Tenant," WITNESSETH:

WHEREAS, certain of the stockholders of the Landlord have heretofore caused the said Landlord to be incorporated for the purpose of buying, maintaining and operating an apartment house in the City of New York, with the intent that each of the permanent stockholders should have the right to lease and occupy an apartment in said building so long as he should be a stockholder of said company under the terms and provisions hereinafter set forth; and

WHEREAS, the Landlord has purchased the apartment building known as....., in the Borough of....., City, County and State of New York,

WHEREAS, the Landlord has purchased said premises subject to a certain first mortgage of....., with interest atper cent payable semi-annually (and to be amortized as required in any renewal or extension thereof), and subject also to a second mortgage of....., with interest at..... per cent payable semi-annually, and to be amortized at the rate of.....per annum, payable semi-annually on thedays of.....and.....; and

WHEREAS, under the plan adopted by said Landlord certain of the stockholders of said Landlord have chosen and have been allotted by the Landlord certain apartments in said building, to be held under the general terms of this lease; and

WHEREAS, the Tenant is the owner of.....shares of the capital stock of said Landlord, and by allotment of the premises herein described and by acceptance by the Board of Directors of said Landlord is privileged to lease the apartment herein described;

Now, THEREFORE, in consideration of the premises and the covenants and conditions herein contained,

1. The Landlord has let and by these presents does grant, demise and let unto the Tenant and the said Tenant has agreed to hire and take, and does hereby hire and take as Tenant the following space in the apartment building of the Landlord above described, and known as....., in said Borough ofand City of New York, viz.: apartment..... for the term of.....beginning.....and expiring with the privilege to the Landlord or Tenant to

renew said lease for the further term of, years, upon such provisions, conditions and covenants as the board of directors may determine, except that the obligation of the Tenant shall not be greater than to pay such a proportion of the net disbursements of the corporation as the percentage of capital stock of said corporation held by him bears to the total capital stock of the said corporation, to be used and occupied by the Tenant as a private apartment and not otherwise, except as the Landlord may in writing otherwise permit, and subject to such rules and regulations concerning the management, regulations and control of said building as the board of directors of the Landlord may from time to time prescribe, for a rent which shall be that proportion of the running expenses of the corporation, including amortization of the encumbrances thereon, and that proportion of such additional sums as the directors may deem advisable to build up and maintain as surplus, reserve and depreciation funds which the par value of the capital stock of the lessor corporation owned by the Tenant bears to the total authorized capital stock of the Landlord, to be paid as follows:

By the annual payment of \$. in advance in equal monthly installments of \$. on the first day of each and every month of the term herein granted and by the payment of such additional sums as additional rent whenever called by the board of directors, which additional sums shall be paid within days after demand thereof has been made in writing by the Landlord; and the Tenant hereby covenants and agrees to pay as rent for the said premises \$. on the first day of each and every month from the beginning of the term and such additional sums as additional rent whenever called by the board of directors, which additional sums shall be paid within days after demand thereof has been made in writing by the Landlord (and wherever in this lease the term rent is hereafter used, it includes such additional sums). In case of the failure by the Tenant to pay the rent above reserved or any part thereof it shall be lawful for the Landlord to recover the possession of the said leased premises, and the same to have again, repossess and enjoy.

2. If the Tenant shall default in the payment of the rent

reserved hereunder or of any part thereof or if the demised premises become vacant (through summary proceedings or otherwise) or deserted, the Landlord by agents and servants may immediately or at any time thereafter recover the possession of the demised premises and remove all persons and property therefrom, either by summary dispossession proceedings or by any suitable action or proceeding at law, or by force or otherwise, without being liable to indictment, prosecution or damage therefor, but in such case the Tenant shall remain liable for the rent reserved herein, and the Landlord may at its option in any such case relet the demised premises or any part or parts thereof as the agent of the Tenant and receive the rents therefor, applying the same, first, to the payment of such expenses as the Landlord may have incurred, and then to the fulfillment of the covenants of the Tenant herein, including also the obligation to pay all the said rent, and the balance, if any, shall be paid to the Tenant who shall be liable to the Landlord for any deficit, and the Tenant shall pay the same month by month and as called for by the directors of the Landlord.

3. In addition to all the other remedies herein contained, in case of a breach by the Tenant of any of the covenants or conditions herein contained and failure on the part of the Tenant to remedy such breach within ten days after notice from the Landlord, then the Landlord at its option may serve a notice notifying the Tenant that at the expiration of twenty days this lease shall terminate, and at the expiration of said twenty days this lease shall be terminated and the term thereof shall expire and in that event there shall be no privilege nor right of renewal.

4. This lease is made, executed, delivered and accepted by the Tenant upon the express condition that the same shall cease, determine and become null and void upon the happening of either or all of the following contingencies:

(a) In case at any time during the term of this lease the Tenant shall cease to be the owner of and shall cease to have standing in the name of the Tenant on the books of the Landlord at least the number of shares of the capital stock of said Landlord above specified.

(b) In case at any time during the term of this lease the

Tenant shall attempt to sell or dispose of said shares of capital stock or any part thereof of this lease otherwise than in accordance with the provisions of the by-laws of the Landlord, which said provisions are to be stamped upon the certificate of said stock and is hereby made a part of this lease and reads as follows:

“No stock of this corporation issued to a lessee of an apartment thereof shall be sold, assigned or transferred, (other than to a member of the lessee’s household, at the time of his death) except to the corporation itself, until after it has been offered to this corporation for thirty days for a sum equal to such a percentage of the value of the net assets of the corporation at the time of said offer as the amount of the stock so offered for sale bears to the total of the amount of the stock of the corporation then outstanding, and the corporation shall for said thirty days have failed to purchase the same for said amount and the secretary or one of the directors of the corporation shall have so certified. In case there is a difference of opinion as to the net value of the assets of the corporation between the stockholder so offering his stock for sale and the corporation, the corporation and the said stockholder shall each appoint an appraiser of the net assets then owned by the corporation, and if said appraisers agree as to the valuation of said net assets their judgment shall be final. If they cannot agree, the said appraisers shall select a third appraiser, whose valuation of said net assets shall be final and conclusive both on the corporation and on said stockholder.

“No stock of this corporation issued to a lessee of any apartment shall be transferred to any person (other than to a member of a stockholder’s household at the time of his death), unless the transferee shall have been approved by the board of directors. No stock designated as carrying a right to a lease shall be transferred unless the lease is also assigned at the same time to the same transferee, nor shall any lease be assigned unless the stock, to which said lease is appurtenant, shall be transferred to the same transferee.

“The stock hereby represented is continuously pledged to the company for the payment of any obligation or liability to the company of the holder of said stock or of any occupant or

lessee or any person claiming through or under said holder of said apartment lease, and otherwise, and will not be transferred except upon such payment and said lien shall be superior to any other claim of any sort in or to said stock and said stock shall not be otherwise encumbered or mortgaged."

This lease is made subject to the right of the Landlord to sell any and all real estate owned by it, provided such sale is approved at a meeting of the stockholders by a vote of three-quarters of the shares of capital stock outstanding at the time of said meeting, and this lease is subject to termination at the option of the board of directors of this corporation in case of such a sale on the first day of October following the execution and delivery by the Landlord of a contract for the sale of real estate, of which the demised premises form a part, or in case the customary date for the termination of leases in the Borough of of apartments, of the general character of those leased by the lessor, should change from the first day of October to some other day in the year, then on the first one of such customary days following the execution and delivery by the Landlord of such a contract, but this Tenant shall be entitled to thirty days' notice prior to the day fixed for such termination.

6. The Tenant for self and legal representatives doth covenant and agree to and with the Landlord, as follows:

a. That the Tenant will pay as rent both the specified sums and the additional payments aforesaid, as above provided.

b. That, throughout said term, the Tenant will take good care of the demised premises and appurtenances, and suffer no waste or injury; make at his own cost as and when needed, in his judgment, all interior repairs in and about the demised premises and the fixtures and appurtenances as he may desire; comply with all laws, ordinances and governmental regulations, and the regulations of the New York Board of Fire Underwriters, applicable to the demised premises; throughout said term and forever afterward, indemnify and save harmless the Landlord for and against any and all liability, arising from injury during said term to any person or property, occasioned wholly or in part by any act or omission of the

Tenant or of the guests, servants, assigns or underlessees of the Tenant.

c. That the Tenant will not do anything, or suffer anything to be done upon the demised premises which will increase the rate of fire insurance upon said building; will not permit the accumulation of waste or refuse matter, and will not, without the written consent of the Landlord first obtained in each case, mortgage or pledge this lease or underlet the demised premises or any part thereof, make any alteration in the demised premises, or use the demised premises or any part thereof or suffer the same to be used, for any purpose other than as a private dwelling apartment, nor by anybody other than the Tenant and the household of the Tenant. It is hereby expressly understood and agreed that the character of the occupancy of the demised premises, as above expressed, is an especial consideration and inducement for the granting of this lease by the Landlord to the Tenant, and in the event of a violation by the Tenant of the restriction against subletting or assignment, or if the Tenant shall cease to occupy the premises without notice to the Landlord, or permit the same to be occupied by parties other than as aforesaid, or violate any other restriction or condition herein imposed, this lease may, at the option of the Landlord or the agents or assigns of the Landlord, be terminated in the manner herein provided.

d. The Tenant will observe and comply with, and the Tenant agrees that all persons dwelling in or visiting in the demised premises, will observe and comply with the rules and regulations printed on the back thereof, and such other and further rules and regulations as the Landlord may from time to time deem needful, and prescribe, for the safety, care and cleanliness of the building, and for the preservation of good order therein as well as the comfort, quiet and convenience of other occupants of the building.

e. The Tenant will purchase from the....., at its option, all electric current that the Tenant requires at the demised premises and will pay the Landlord for the same, as the amount of consumption shall be indicated by the meter furnished therefor. The price for said current and for lamps shall be the same as that charged by.....or by other

company arranged for by the Landlord for consumption similar to that of the Tenant. Payments shall be due as and when bills shall be rendered. The Tenant shall comply with like rules, regulations and contract provisions as those prescribed by said for a consumption similar to that of the Tenant. If the Tenant shall maintain a telephone switchboard, and a connection therewith in the demised premises, the Tenant will pay to the Landlord for such service at the same rates as charged by the Landlord to other occupants of the building. Any amount as to which the Tenant shall at any time be in default for or in respect to the use of the electric current or for lamps or for such telephone service, shall be deemed to be "additional rent" for the demised premises, and shall be due and payable by the Tenant to the Landlord on the first day of the next following month, or, at the option of the Landlord, on the first day of any succeeding month. For the non-payment of any such "additional rent" the Landlord shall have the same remedies and rights that the Landlord has for the non-payment of any rent reserved herein.

f. This lease shall be subject and subordinate at all times, to the lien of the mortgages now on the demised premises, and to all advances made or hereafter to be made upon the security thereof, and subject and subordinate to the lien of any mortgage or mortgages which at any time may be made a lien upon the premises. The Tenant will execute and deliver such further instrument or instruments subordinating this lease to the lien of any such mortgage or mortgages as shall be desired by any mortgages or proposed mortgages. The Tenant hereby appoints the Landlord the attorney-in-fact of the Tenant, irrevocable, to execute and deliver any such instrument or instruments for the Tenant.

g. Any notice or demand by the Landlord to the Tenant shall be deemed to be duly given if either delivered personally to the Tenant or mailed by registered letter in any general or branch post office enclosed in a postpaid envelope addressed to the Tenant at the building in which the demised premises are situate. Any notice by the Tenant to the Landlord shall be deemed to be duly given if in writing and delivered personally to one of the officers of the Landlord.

h. The Landlord shall not be liable for any failure of water supply, electric current or telephone service, nor for injury or damage to person or property caused by the elements or by other tenants or persons in said building, nor responsible for any package or article left with or entrusted to an employee of the Landlord. If the Landlord shall furnish to the Tenant any storeroom, use of laundry or any other facility outside of the apartment demised, it is understood and agreed that the same is furnished gratuitously by the Landlord, and that if any person shall use the same such person does so at his or her own risk and upon the express stipulation that the Landlord shall not be liable for any loss of property therein, or for any damage or injury whatever to person or property.

i. The Landlord shall not be liable for any damage to any property to said premises or building from the Croton or other water, steam, gas, electricity, snow, rain, sewerage or any substance which may leak into, issue or flow from or into any part of said building of which the premises hereby leased are part, or from any other place or quarter, nor for any damage that may be suffered by the Tenant through the fault or negligence of another tenant of the building, of which the demised premises form a part, nor by reason of any other matter, cause or thing in whatsoever manner the same may be caused.

j. No diminution or abatement of rent, or other compensation, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the building or its appliances, nor for any space taken to comply with any law, ordinance or order of a governmental authority. In respect to the various "services," if any, herein expressly or impliedly agreed to be furnished by the Landlord to the Tenant, it is agreed that there shall be no diminution or abatement of the rent, or any such other compensation, for interruption or curtailment which shall be due to accident, alterations or repairs desirable or necessary to be made or to inability or difficulty in securing supplies or labor for the maintenance of such "service" or to some other cause, not gross negligence on the part of the Tenant. No such interruption or curtailment of any such "service" shall be deemed a

constructive eviction. The Landlord shall not be required to furnish, and the Tenant shall not be entitled to receive, any of such "services" during any period wherein the Tenant shall be in default in respect to the payment of rent, or of any part thereof.

k. In case the said apartment building shall be partially damaged by fire, the same shall be repaired as speedily as possible at the expense of the Landlord, so as to conform to the original plan and specifications for said building; but in case of the total or substantial destruction of said building by fire or otherwise, then and from thenceforth this lease shall cease and come to an end unless the Landlord should elect to rebuild the building in conformity to the original plans and specifications for said building or unless the insurers of said building should elect to rebuild said building under the terms of any provision which may be contained in their policies of insurance, in which case this lease shall not cease but shall continue and apply in respect to the apartment in the building so rebuilt, which shall correspond with the apartment hereby demised. Whether said election to rebuild shall be exercised by the Landlord shall be determined by vote of the stockholders at a meeting, of which written notice of at least ten days stating the purpose of the meeting shall be given to each stockholder in the manner herein described.

l. The Tenant shall be entitled, without special charge therefor, to such a supply of heat and use of and service for all public or common facilities or parts of the building as are provided for other tenants of similar apartments in the building. The Tenant shall also be entitled, without special charge therefor, to the use of water if and as long as the apartments are not separately metered, but in case the apartments are separately metered for water then the Tenant shall pay the meter charge for said water.

m. In case the Tenant shall at any time hereafter sublet the within demised premises, with the consent of the Landlord and shall thereafter make default in payment of the rent or other payments herein provided to be paid by said Tenant, then and in such event the Landlord may, and it is hereby authorized, as the agent of the Tenant, to collect from

the sub-tenants or under-tenants of the Tenant occupying such apartment or any part thereof, and who shall be or become indebted to said Tenant, the legal representatives or assigns of the Tenant, and to receive the rent of the apartment or any part thereof so occupied by them or any of them; and to apply the same on account of the rent and other payments remaining unpaid by the Tenant as aforesaid, or so much thereof as the sum or sums from time to time falling due to the Tenant from such under-tenants will suffice to pay; and any such payment of such rent to the Landlord by such under-tenants shall be reckoned a full and sufficient payment by and discharge of such under-tenants as between them and the Tenant, the legal representatives and assigns of the Tenant to the extent of the amount so paid to the Landlord as aforesaid.

n. The Landlord and the Landlord's agents shall be permitted at any time during the term to visit and examine them at any reasonable hour of the day, and workmen may enter at any time, when authorized by the Landlord or the Landlord's agents, to make or facilitate repairs in any part of the building; and if the said Tenant shall not be personally present to open and permit an entry into said premises, at any time, when for any reason an entry therein shall be necessary or permissible hereunder, the Landlord or the Landlord's agents may forcibly enter the same without rendering the Landlord or such agents liable to any claim or cause of action for damages by reason thereof (if during such entry the Landlord shall accord reasonable care to the Tenant's property), and without in any manner affecting the obligations and covenants of this lease; it is, however, expressly understood that the right and authority hereby reserved, does not impose, nor does the Landlord assume, by reason thereof, any responsibility or liability whatsoever for the care or supervision of said premises, or any of the pipes, fixtures, appliances or appurtenances therein contained or therewith in any manner connected.

o. If the Tenant shall at any time be in default hereunder, and if the Landlord shall institute an action or summary proceeding against the Tenant based upon such default, then the Tenant will reimburse the Landlord for the expense of attorneys' fees and disbursements thereby incurred by the

Landlord, so far as the same are reasonable in amount. Also, so long as the Tenant shall be a tenant hereunder, the amount of such expenses shall be deemed to be additional rent hereunder, and shall be due from the Tenant to the Landlord on the first day of the month following the incurring of such respective expenses.

The Landlord covenants:

a. That if and so long as the Tenant pays the rent reserved hereby, and performs and observes the covenants and provisions hereof, the Tenant shall quietly enjoy the demised premises, subject, however, to the terms of this lease, and to the mortgages above mentioned and provided for.

b. Subject to the provisions of Paragraph tenth above, the Landlord will furnish the following respective services: (a) if there be a passenger elevator in the building, then passenger elevator service to and from the demised premises at all times; (b) hot and cold water in reasonable quantities at all times if and as long as the apartment hereby demised is not separately metered for water; (c) steam heat during the cold season in each year. The Landlord may furnish additional service, but any such service shall be gratuitous unless otherwise arranged, and shall not be an obligation of the lessor, or part of the consideration for the rent.

The Tenant for himself and his legal representatives covenants that this lease will not be assigned (other than to a member of his household at the time of his death) and that the premises demised shall not be sublet, except to such persons as the board of directors may approve, and that the refusal of the board of directors to so approve may be arbitrary, and further covenants that if he does assign or sublet or attempts to assign or sublet, except in accordance with the above covenant, that this lease shall then be null, void and terminated. If, however, the board of directors refuses its approval to any proposed assignment or subletting of this lease and any member of the board of directors dissents from the action of the board, then, at the request of the Tenant, a meeting of the stockholders of the Landlord shall be called as soon as possible under the by-laws of the Landlord, and thereupon if three-quarters of the stockholders consent to said proposed

subletting or assignment, the board of directors will consent thereto.

THIS AGREEMENT shall bind and run in favor of the respective heirs, executors, legal representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the Landlord has caused its corporate name to be hereunto signed by its president thereunto duly authorized and its corporate seal to be affixed hereto, duly attested by its secretary, and the Tenant has hereunto set the Tenant's hand and seal, the day and year first above written.

Lease of Apartment in New York City

AGREEMENT made the.....day of.....
.....in the year one thousand nine hundred and.....
between.....

.....part of the first
part hereinafter designated as the lessor; and.....
part of the second part, hereinafter designated as the
lessee ,.....

Witnesseth that the lessor has agreed to let and hereby does
let and demise to the lessee, and the lessee has agreed to take
and hereby do take from the lessor the apartment designated
as.....on the.....floor of the building known as

.....
in the Borough of Manhattan, City of New York, for the
term of.....

commencing on the.....day of....., 19..,
and ending on the.....day of....., 19..,
it being hereby expressly understood and agreed that the premi-
ses so demised shall be occupied only by the lessee and by the
members of h family as a private dwelling apartment, and for
no other use or purpose whatever.

And the said Lessee hereby covenants and agrees to pay unto
the said Lessor rental, in equal monthly payments, in advance,
on the first day of every month during said term, as follows:

From.....19.. to.....19.., the sum of \$.....
rental in equal monthly payments of \$.....

From.....19.. to.....19.., the sum of \$.....
rental in equal monthly payments of \$.....

From.....19.. to.....19.., the sum of \$.....
rental in equal monthly payments of \$.....

This lease is granted and accepted upon the foregoing and upon the following covenants and conditions and subject to the following restrictions, to all and every one of which the lessee consent and hereby expressly covenant and agree with the lessor to keep and perform.

1. That the lessee shall well and truly pay to the lessor the yearly rent herein reserved on the days and in the manner hereinbefore prescribed for the payment thereof.

2. That the lessee shall not assign this lease nor underlet the demised premises, or any part thereof, or make any alterations, additions or improvements therein without the written consent of the lessor or agents first endorsed hereon; shall not do, perform or suffer in or upon the said premises any act or thing deemed extra hazardous on account of fire; shall comply with all the rules and regulations of the Board of Health and City ordinances applicable to said premises; and shall not use the same, or any part thereof, or permit the same to be used for any purpose other than for the personal occupation thereof by the lessee, and family, as hereinbefore provided.

And it is expressly stipulated and agreed that the lessor's or agents' consent to any act of assignment or subletting shall be held to apply only to the specific act thereby authorized. Such consent shall not be construed as a waiver of the duty of the lessee, his personal representative or assigns, to obtain from the lessor consent to any other or subsequent act of assignment or subletting, or as modifying or limiting the rights of the lessor under the foregoing covenant by the lessee not to assign or sublet without such consent.

3. That the lessee shall take good care of the demised premises and of the pipes, fixtures, appliances and appurtenances therein contained; shall suffer no waste in driving picture or other nails into the walls or woodwork of the said premises or in allowing the same to be driven, or otherwise; shall at his own cost and expense make and do all repairs required to walls, ceilings, paper, plumbing works, ranges, pipes and fixtures

belonging thereto whenever damage or injury to the same shall have resulted from misuse or neglect; and at the end or other expiration of the term, shall deliver up the premises in good order and condition.

4. That the lessor shall not, at any time or in any event, be liable for any damage to property in the demised premises or in the building in which the said premises are situated occasioned by leakage of Croton water or other water, steam or gas, from or into any part of the said building, or arising from any other cause.

5. That the lessee shall permit the demised premises to be shown to applicants during four months next before the expiration of this lease: If the lessee shall not be personally present at any time during said period to open and permit the entry into said premises, or if at any time an entry shall be deemed necessary for the inspection or protection of the property, or for making any repairs or decorations, the lessor or agents may enter into the same by means of a master key or otherwise without being liable to any prosecution, claim or cause of action by reason thereof, and without in any manner affecting the obligations of this lease. It is, however, expressly understood and agreed that the right and authority hereby reserved does not impose, nor does the lessor assume by reason thereof, any responsibility or liability whatsoever for the care, maintenance or supervision of the demised premises or any of the pipes, fixtures, appliances or appurtenances therein contained or therewith in any manner connected.

6. That the lessee has read the rules and regulations hereto subjoined and made a part hereof, and hereby agrees to abide by and conforms to the same and to such further reasonable rules and regulations as the lessor may from time to time make or adopt for the care, protection and government of the building and the general comfort and welfare of its occupants.

7. The lessor will furnish to the lessee, without additional charge, elevator service, steam heat during the winter months, and hot and cold water.

It is mutually understood and agreed, in case it shall become necessary at any time in the judgment of the lessor, to omit or suspend the operation of the elevators, the heating apparatus

or other portion of the mechanical service of the said building, in consequence of accident or by reason of pendency of work incident to the repair or reconstruction of the mechanical equipment thereof, including elevators, electric equipment, heating apparatus, plumbing service, boilers and other machinery therein contained, that the lessor shall be at liberty to omit or suspend such operations, or any of them, until the necessary repairs or reconstruction, as the case may be, shall have been made and completed, without affecting or in any way modifying the obligations and covenants herein contained on the part of the lessee, or rendering the lessor liable for any damage or offset by reason thereof. In any such case, however, the lessor shall use due expedition and diligence in undertaking and completing any necessary works of repair or reconstruction.

8. That the lessee agrees at his own cost and expense to make good and repair all damage to the demised premises and to the fixtures and appurtenances therein contained, or to the property in said building belonging either to the lessor or to other tenants, caused by the acts or omissions of the lessee, or the members of his family, his servants or agents, including particularly any and all damage caused by neglect or misuse of the water appliances, gas fixtures and steam radiators or connections subject to the control of the lessee.

9. That the lessee will, in case of fire, give immediate notice thereof to the lessor, who shall thereupon cause the damage to be forthwith repaired, unless the premises be so damaged that the lessor shall decide to rebuild, in which case, but not otherwise, the term shall cease, and the accrued rent paid up to the time of the fire. If the premises demised, or any part thereof, are so far injured by fire as to be rendered untenable but are nevertheless repaired by the lessor, then an abatement will be made from the rent corresponding with the time during which, and the extent to which, the same may have been untenable.

10. In case of default on the part of the lessee in any of the covenants of this lease, or if the demised premises become vacant, the lessor may re-enter, without notice, or by means of summary proceedings, or in any other method prescribed by law, and resume possession and relet the premises in his own

name, for the account of the lessee without terminating this lease or in any manner affecting the obligations of the lessee to pay as damages the amount herein covenanted to be paid as rent. In this event, however, there shall be credited to the lessee the amount received from said reletting, after deducting the expenses of such proceedings as may have been necessary in order to regain possession, as well as the cost of reletting the premises; and the execution of a new lease for the said premises shall not terminate the lessee's liability or obligations hereunder, which shall in all events remain in full force and effect for the full term of this lease. The lessee having once vacated, may not re-enter without the consent of the lessor. No act or thing done by any officer or agent of the lessor, during the term hereby granted, shall be deemed an acceptance of a surrender of said premises, and no agreement of surrender or to accept a surrender of said premises shall be valid unless the same be made in writing, by the lessor or authorized agent.

In case of re-entry by the lessor or agents in any manner hereinbefore prescribed, the amount of damages or deficiency shall become due and payable each month as soon as the amount of said damage or deficiency shall have been ascertained in the manner herein provided, and separate actions may be maintained each month to recover the damage or deficiency then due, without waiting until the end of the term; and no notice or demand shall be necessary in order to maintain such action.

11. It is hereby understood and agreed that the character of the occupancy of the demised premises is a special consideration and inducement for the granting of this lease by the lessor to the lessee. It is therefore expressly agreed, in case the lessor or agents shall determine any conduct on the part of the lessee or of the occupants for the time being of the demised premises to be objectionable and improper, that the lessor or agents shall have full license and authority to determine this lease and to re-enter and have full possession of said premises, either with or without legal process, on giving five days' previous notice of its intention so to do, and on tendering payment of a sum equal to the installment of rent which accrued on the first day of the then current month, in case such install-

ment of rent shall then have been paid. Upon the expiration of said notice and upon tender of payment as aforesaid, the estate hereby granted and all right, title and interest therein on the part of the lessee shall cease and determine, and the lessor, agents or assigns, shall be entitled to the immediate possession of said premises; and in consideration of the above letting, the lessee hereby covenants and agrees that the lessor and agents, shall not be liable for prosecution or for damages in resuming possession of the demised premises in the manner hereinbefore set forth.

12. The lessor shall furnish gratuitously for the accommodation of the lessee a room for the storage of trunks, bicycles, and other articles. It is mutually understood and agreed, however, that such provision on the part of the lessor is gratuitous; that the lessor shall in no event be or become liable for loss or damage to property stored therein or for any other damage or injury thereto; and that the lessee will assume liability for any personal injury sustained either by the lessee or by the members of his household his servants or employees, resulting in any way from the use or occupation of such store-room.

13. That if the demised premises be in a building where the Lessor shall desire to supply the electric current to the Lessee, the Lessee hereby agrees to use no other current than that supplied by the Lessor and to pay therefor the same rate as is charged by the Public Service Corporations having the conduit in front of said building. However, the Lessor shall furnish or cause to be furnished suitable meters and other necessary arrangements similar to those furnished by such Public Service Corporations. The charge for the electric current shall be paid for monthly, and the Lessor reserves the right to discontinue such service 15 days after the presentation of the bill to the Lessee. Also if the Lessor so desires, the Lessee agrees to pay a deposit as a guarantee that the bills will be paid in accordance with the terms of the contract, the amount to be returned with six (6%) per cent. interest thereon upon the termination of said contract, the surrender of the certificate of deposit and the payment in full of the indebtedness or to be applied to liquidation of the account.

14. It is mutually understood that the telephone instrument in the demised premises is the property of the New York Telephone Company. Telephone service privileges may be exercised by the lessee upon condition that he shall and hereby do agree to pay therefor, in monthly installments, the regular charges for service to be determined by the lessor. Such service may be discontinued and withdrawn by the lessor in case the amount due by the lessee for tolls shall not be paid during the month in which the account therefor shall have been rendered. It is further mutually agreed that any such discontinuance of telephone service shall not in any way affect or modify the obligations of the lessee hereunder.

15. That the lessee shall not at any time place or display in or upon the exterior of said building, or upon any part thereof, or in or upon any window of the demised premises, including the sills or ledges thereof, any signs, advertisements, illumination or projection, unless the style, size and location of the same shall have been first authorized and approved in writing by the lessor or authorized agent. The Lessee shall use only such shades in the front windows of the demised premises as shall have been either furnished or approved by the lessor.

16. That on the last day of the said term, or on the sooner determination of the estate herein granted, the lessee shall peaceably and quietly leave, surrender and yield up unto the lessor all and singular the demised premises, together with all alterations, additions and improvements which may have been made by either of the parties hereto upon the premises, except movable furniture put in at the expense of the lessee .

17. That the lessee accepts this lease and subject and subordinate to the mortgage or mortgages now a lien upon the premises hereinabove described, and agrees that this lease shall be subject and subordinate to the lien of any other mortgage or mortgages which may at any time hereafter be secured by the lessor. And the said lessee agrees that he will, at any time hereafter, on demand execute any instruments, releases, or documents that may be required by any mortgagee or mortgagor for the purpose of subjecting and subordinating this lease to the lien of any such mortgage or mortgages, original or substituted, and in case of the failure of the lessee to execute

said papers on demand, the lessor is hereby authorized as the attorney and agents of the lessee to execute such releases, instruments or other documents and in such event, the lessee hereby confirms and ratifies any such instruments so executed by virtue of this power of attorney.

18. The parties mutually covenant and agree that these premises are leased upon the express condition that the term of this letting and hiring shall be deemed to be, and the same is hereby extended as between the parties hereto for the further term of year.. from the day of 19 . . . at annual rental of \$, payable in equal monthly payments in advance on the first day of every month during the said extended term, without deduction or concession, and upon terms, conditions and covenants identical in all respects with the terms, conditions and covenants of this lease, including the covenant contained in this paragraph for any future renewal or extension thereof, unless the lessee shall give notice to the lessor in writing, on or before the first day of June next preceding the expiration of the then current term, of an intention to vacate and surrender the demised premises at the date of such expiration. Service by the lessee of such written notice by U. S. registered mail, postage prepaid, addressed to the landlord or his agents in charge of the demised premises, shall be sufficient.

It is further mutually covenanted and agreed, however, that the landlord shall have the right and is hereby expressly empowered to cancel and annul any renewal or extension of this lease by giving to the lessee at any time prior to the first day of July next preceding the expiration of the then current term, written notice of an intention so to do. Service of such notice by U. S. registered mail, postage prepaid, addressed to the lessee at the demised premises shall be sufficient.

- Hennessy Realty Co. *v.* Bernstein, 110 Misc. 331, 180 N. Y. Supp. 540;
United States Realty & Improvement Co. *v.* Erving, 172 N. Y. Supp. 214;
Manhattan Realty Co. *v.* Marchbank, 87 Misc. 336, 149 N. Y. Supp. 834.

19. The lessor hereby coveants and agrees that the lessee , on paying the said rents and sums above reserved and provided for, and performing each and every covenant, condition and agreement herein mentioned on h part shall and may peacefully and quietly have, hold and enjoy the demised premises during the term aforesaid.

20. It is agreed that the covenants and agreements contained in the within lease shall be binding upon the parties hereto and upon their respective successors and legal representatives.

.....Owner.
Tenant.

Lease—Simple Form

AGREEMENT made....., between....., hereinafter designated as the Landlord, and....., hereinafter designated as Tenant.

1. The Landlord hereby lets to the Tenant, and the Tenant hereby hires from the Landlord, the....., for the term of....., commencing....., and ending....., to be occupied as a.....by the tenant and immediate family and not otherwise.

2. The Tenant hereby covenants and agrees to pay to the Landlord the rent of..... in advance, on the first day of each and every month during said term.

3. The Tenant shall not assign this lease or underlet the demised premises or any part thereof or make any alterations, additions or improvements in the premises without the written consent of the Landlord, nor permit or suffer upon the premises any act or thing deemed extra-hazardous on account of fire.

4. The Tenant shall not use or permit the demised premises or any part thereof to be used for any other purpose than that of a private apartment for himself and immediate family.

5. If any rent shall be due or unpaid, or if default shall be made in any of the conditions or covenants herein contained, or if the said premises or any part thereof shall be vacated by the tenant during the term granted by this lease, the Landlord may recover and resume possession of said apartment, either by

force or otherwise, without being liable to prosecution therefor, remove all persons and property therefrom, relet the said premises as agent for the Tenant, receive and collect the rents thereof, applying the same first to the payment of such expenses as the Landlord may have incurred in recovering the possession of the said apartment and reletting the same, second to the payment of any costs or expenses that the Landlord may have incurred, either for repairs or by reason of any condition or covenant being unfulfilled on the part of the Tenant and then to the payment of any rent due or to become due under the terms of this lease, with interest, and the Tenant agrees to pay any deficiency which may arise.

6. During months prior to the expiration of the term hereby granted, persons shall be admitted at reasonable hours to view the apartment until rented; and the Landlord or agent shall also be permitted at any time during the term to visit and examine the apartment at any reasonable hour; and whenever necessary for any alterations or repairs to any part of the building, the servants and agents of the Landlord shall be permitted to enter the apartment to make such repairs and alterations.

7. The Landlord shall have the right, at any time upon entering into a contract for the sale of the premises, to cancel this lease, and the term hereby granted, upon giving to the Tenant days' notice of his intention so to do, and upon the expiration of said days, the Tenant agrees to vacate the premises and to surrender this lease and the term hereby granted.

Lease of Theatre for Exhibition of High Class Motion Pictures

Williston, Section 1955, note.

AGREEMENT made between, hereinafter called the "Landlord," and, hereinafter called the "Tenant."

WHEREAS the Tenant is desirous of procuring the use of the Theatre in for the purposes hereinafter provided:

NOW IN CONSIDERATION OF THE PREMISES THE PARTIES HERETO AGREE AS FOLLOWS:

1. The Landlord lets unto the Tenant, for the purpose of exhibitions of first class motion pictures only, for a period ofcommencing.and terminating., the. Theatre,° at., excepting and reserving the proscenium box on the right of stage known as Box. . . . free admission and right to occupy the same during all performances being reserved for the Landlord, his lessor and nominees; if no notice of intended occupation of said box is given before four p. m. on any day, the Tenant may sell the same for that day.

2. The Tenant hires the said premises for said period of. . . . and agrees to pay therefor a rental of.payable in installments in advance,.on the signing and delivery of this agreement, receipt whereof is hereby acknowledged; and.in equal payments of.in advance onalso.being of the license fee for the presentation of dramatic and theatrical performances at said theatre, and all other license fees and taxes imposed for the presentation of dramatic and theatrical performances at said theatre during the term of this agreement; and also pay to the Landlord all rents and charges which may be assessed or imposed according to law, upon said theatre premises for the Croton water which shall be used in the theatre, and for the placing of meters for measuring the same; and the same shall be added to and become a part of the rent. These license fees and water rents and charges shall be paid when each becomes due and payable to the.and if not then paid by the Tenant, the Landlord or his representatives may pay the same and the same shall thereupon become part of and be added to the rent falling due or that may thereafter at any time fall due; and the Landlord and his representatives may maintain all the remedies for the recovery of such moneys or the possession of said premises that they might maintain for the non-payment of rent.

3. The Tenant agrees to keep said premises, including the roof and the entrances on, and all the window glass and skylights, all the gas, sewers, steam, water and drain pipes, faucets,

water fixtures, grates and machinery as are under control or possession of second party and all other appurtenances, in good condition and repair and return the same at the end of the term or sooner termination of this agreement, in as good condition as at the beginning of the term, reasonable wear and damages by fire or the elements excepted, and shall execute and comply with all the laws, rules, ordinances, orders and regulations of the their departments and bureaus, the Federal Government and Boards of Fire Underwriters, it being agreed, however, between the parties hereto, that the Tenant is not required to make any substantial structural changes. All alterations and improvements and additions made by the Tenant shall belong to the Landlord. If by reason of any statute, law or ordinance or lawful regulation of any governmental authority, and without any neglect or default of the Tenant in complying with the terms of this clause and lease, the use of said theatre for motion picture exhibitions shall be or become unlawful, then and in that event, the Tenant shall have permission to use said theatre for first class legitimate theatrical productions. The Tenant agrees at the end of the term or sooner termination hereof, peaceably and quietly to yield up and surrender to first party said premises in the condition last aforesaid.

4. The Tenant agrees to hold the Landlord free and harmless from and indemnify him against any liability or claim for damages or otherwise, cost and expense for any accident occurring on the said premises during the occupancy of the Tenant, and also from and against any claim, cost or expense or liability by reason of the operation of said theatre by the Landlord during the term hereof, and not to make any changes or additions in or to the premises, except to install the necessary equipment for the proper exhibition of motion pictures (subject to Landlord's prior written approval) without the prior written consent of the Landlord in each instance nor to change the name of the theatre during said term.

5. The Tenant shall not assign or sublet this agreement or the said premises or any part thereof or any rights thereunder to any other person or corporation without the prior written consent of the Landlord in each instances had and obtained.

6. The Tenant shall take electric current for lighting exclusively from the Landlord and pay.....therefor at the rate of.....and shall further pay.....per month for the use of vacuum compressed air cleaning apparatus installed in said theatre. Should the Tenant fail to pay for such light and compressed air apparatus, same shall be added to rent due or thereafter falling due and same remedies may be maintained by the Landlord for recovery of such moneys, or possession of the premises as he might maintain for non-payment of rent.

7. The Tenant agrees that it will print on every program used in said theatre in a conspicuous place and manner on the first page and above the name of the play or performance, the present name of the theatre.

8. The Tenant agrees that the Landlord and his agents may at all reasonable times enter into and inspect the premises.

9. Should the Landlord at any time during the term waive any breach of any covenant or condition on the part of the second party, it shall not be construed or held to operate as a waiver, or to in any way affect the Landlord's right to insist upon the enforcement of his rights in respect of any further or other breach of a covenant or condition by the Tenant, precisely as though no waiver had ever been made.

10. The Tenant agrees at all times, both day and night, to keep a watchman on the demised premises at its own expense and do nothing that will increase the present insurance rates.

11. In the event of the abandonment of the premises or removal therefrom by the Tenant, or the re-entry by the first party, by summary proceedings, peaceably, forcibly, or in any other manner, the Tenant hereby expressly waives all statutory rights of redemption of the premises.

12. In the event of the Tenant being judicially declared insolvent, or bankrupt, or if it shall make a general assignment for the benefit of creditors, or a receiver being appointed, this agreement shall immediately thereupon, at the option of the Landlord, terminate, and in the event that the said premises shall be taken under the right of eminent domain in condemnation proceedings, this agreement, at the option of the Landlord, may be forthwith terminated.

13. The provisions in this agreement contained shall be construed to be conditional limitations, terminating agreement on a breach of any of the said conditional limitations, whereupon the term of this agreement shall expire and the Landlord may re-enter by summary proceedings, peaceably, forcibly or in any other manner as if the term had expired by lapse of time and the Tenant was holding over and continuing in possession after the expiration of the term.

14. It is agreed that, in case of damage by fire or the elements, the Tenant shall give immediate notice thereof in writing to the Landlord, and, if a part only of the said building shall be damaged, but not so as to render the premises wholly untenable, the rent shall abate proportionately and the Landlord shall commence within.....days after notice to repair the same at its own cost and expense, and complete said repairs with due and reasonable diligence; if the damage shall be so extensive as to render the said building wholly untenable, the rent shall cease from the time the Landlord shall be notified by the Tenant of such damage until the said building is restored to a tenable condition and after the said building is restored to a tenable condition the rent shall begin again to run and be payable as before the damage; but, in case the said building shall be totally destroyed by fire or the elements, or the damage shall be so great that it will be necessary to rebuild the entire building or erect a new building on the site, the rent shall be apportioned pro rata and paid up to the time of such destruction or damage, and upon such payment being duly made by the Tenant, this lease shall come to an end. The Tenant hereby expressly waives the provisions of Section... of the Real Property Law relating to the destruction of the demised premises by fire or the elements.

15. It is agreed that if the Tenant shall fail or neglect to pay any installment of rent at the time and in the manner hereinbefore provided or should fail or neglect to perform or fulfill any of the covenants, conditions or agreements on its part to be performed or shall interfere with or prevent the exercise of any right or privilege by this agreement given to the Landlord then the Landlord may notwithstanding any

license or waiver of any prior breach and without any notice and demand, enter into and upon said premises and repossess them as of their former estate, and expel and remove the Tenant and its effects, peaceably, or forcibly or by summary or dispossess proceedings and without being deemed guilty of any manner of trespass and without prejudice to any remedy which might otherwise be used for arrears of or future rent or breach of covenant or agreement all which shall survive such re-entry or dispossess proceedings and warrant, and in the event of the Landlord taking possession, he may at his option re-let the said premises or any part thereof for the same or other purposes; if so re-let the Tenant, its successors and assigns shall be liable for and agree to pay regularly monthly, the difference or deficiency between the amount and installments herein provided to be paid and the amount received by the Landlord upon such re-letting, if any, less the expense of re-entry and re-letting, and the amounts shall be paid by the Tenant upon the days above mentioned as the amount shall be at such times; and if there is no re-letting Tenant agrees to pay the full amount and installments hereinbefore provided on said days above mentioned; the said amounts shall be payable on as aforesaid and no suit for any amount payable shall be a bar to any subsequent suit for subsequent defaults; such re-entry or the issuance of such warrant in dispossess proceedings as aforesaid shall not release the Tenant or terminate the liability to pay or make good the rental and all other sums in this agreement provided to be paid and obligations to be performed.

16. The agreement and its provisions, shall be binding upon and apply to the first party, his heirs, personal representatives and assigns, and to the second party, its successors and assigns where an assignment has been consented to by the first party, as herein provided.

Farm Lease Contract
(Livestock in Partnership)

Prepared by PROFESSOR LYNN ROBERTSON and M. L. FISHER of Purdue University.

THIS AGREEMENT made this day of 19 . . , by and between , lessor, and , lessee.

WITNESSETH: that the said lessor has this day leased to the said lessee his farm of acres known as the farm, and located and described as follows: for a one year period beginning , 19 . . , and ending 19 . . , for the purpose of farming, subject to the conditions hereinafter set forth.

Section 1. Renewal. It is understood that this lease shall be automatically renewed from year to year, but may be terminated at any time by mutual consent, by failure of either party to keep the covenants of this agreement, or upon six month's written notice from either party, provided such notice is given between any April 1 and the next September 30, inclusive. If such notice is given between any October 1 and the next March 30, inclusive, the date of the termination of the lease shall be the first of the next October following such notice, unless the date is changed by mutual consent after the notice is given.

Provided, in all cases, that if the lease terminates in the fall before corn or other crops can be conveniently or economically harvested, the lessee shall have the right to enter the farm after the termination of the lease for the purpose of harvesting such crops, which he agrees to do without unreasonable delay, and to deliver over to the lessor the share of such crops which it is hereinafter agreed the lessor shall receive.

The lessee agrees to move on to said farm on or about , 19 . . , and to farm and care for the same in a good and husband-like manner during the continuance of this lease.

Section 2. What Each Party Shall Furnish. Each party shall furnish one-half of all seed to be planted or sown on said farm; one-half of the fertilizer or lime to be applied to the soil;

one-half of all livestock, including poultry but not including horses; one-half of all feed and salt for same, pay one-half of the fee for registering purebred partnership livestock; pay one-half of the freight charges for shipping, feed, seed, fertilizer, or partnership livestock, to or from the farm; pay one-half of the expenses for veterinarian or stock medicine (except for lessee's horses); pay one-half of the usual machine expense for threshing, hulling clover, filling silo, shredding fodder, and baling hay, together with one-half of the fuel charge for same in case it is necessary to buy fuel for such machine work; pay one-half of the taxes on the undivided livestock and crops held in common, and one-half of the cost of insuring the same; pay one-half of the telephone rent; and shall receive one-half of the increase and receipts from the sale of all crops and livestock, except as hereinafter provided.

The lessee shall furnish and keep in repair at his expense, all machinery necessary for the successful operation of said farm, except the following, which the lessor agrees to furnish with the understanding that the lessee shall take proper care of the same and repair any breakage not due to natural wear and tear or unavoidable accident.

The lessee shall furnish all labor, and all the horses necessary for operating the farm, the horses to be fed from undivided feed. In case colts are raised the lessor shall pay the breeding fees and shall have a half interest in the colts.

Section 3. Purchase of Interest in Each Other's Livestock, Feed, etc. Each party agrees to purchase one-half interest in as much of the livestock, feed, seed, fertilizer or lime belonging to the other party at the beginning of this lease, as it is mutually agreed shall be used on this farm. In the case of feeds not weighed the following rule shall apply; ear corn shall be measured in the crib and 2.5 cubic feet considered one bushel; oats, barley, wheat and rye shall be measured in the bin and 1.25 cubic feet considered one bushel; hay shall be measured in the mow or stack and 400, 450, 500 cubic feet considered one ton. No charge shall be made to the lessee for straw or fodder in the barns or on the fields on said farm, nor shall the lessee claim reimbursement for any such material

remaining on the farm at the termination of the lease, nor shall he remove any straw or fodder from the farm without the consent of the lessor.

Section 4. Note May Be Given by Lessee. The amounts owed to either party by the other party under the provisions of section 3 of this lease, shall be set off against each other and the difference paid in cash. Provided, however, that if the difference is owed by the lessee, he may give the lessor his note for the same, payable in.....months with interest at.....%.

In the event of the termination of this lease before the maturity of said note, the note shall become due immediately, and the debt shall constitute a prior lien on the lessee's share of livestock, feed, and other supplies on the farm.

Section 5. Crops and Soil Treatment. The crops to be grown and the soil treatment to be given on each field of the farm during the continuance of this lease shall be mutually agreed upon by the lessor and the lessee.

Section 6. House, Garden, Truck Patch. The lessee shall have the house, garden spot, and a truck patch, the latter not to exceed.....acre, for the use of his family. He agrees to keep the premises in neat and tidy condition, and to use precaution in protecting all vines, bushes and shade trees from injury.

Section 7. Fuel for Family Use. Lessee shall have the dead and down timber for fuel, but he shall not use for fuel any logs suitable for saw timber, or any sawn timber or rails, nor shall he cut down live trees.

Section 8. Meat. The lessee shall have the right to butcher as many hogs as he shall need for the use of his family. He shall weigh such hogs and pay the lessor for one-half of them at market price.

Section 9. Poultry. All poultry kept on the farm shall be owned in partnership. Lessee shall be allowed poultry and eggs for family consumption only on this farm. The receipts from all poultry and eggs sold shall be shared equally.

Section 10. Dairy Products. The lessee shall be allowed milk for family consumption only on this farm. All other milk and milk products shall be shared equally by the lessor and the lessee.

Section 11. Buying and Selling. Buying and selling of partnership property shall be left largely to the lessee, provided, however, he shall make no purchases or sales involving amounts over \$. without first obtaining the consent of the lessor.

An account for the farm shall be opened at the.
Bank of. in the partnership name of.
All partnership receipts shall be deposited to this account, and all partnership expenses paid therefrom by check. All checks for amounts over \$. shall be signed by both parties. Division of this account between the parties shall be made as convenient, and neither party shall check money directly from this account for personal use.

Section 12. Pasturing Stock for Outside Parties. No livestock not partnership, other than the lessee's horses, shall be kept on the farm, except that the lessee may pasture stock for outside parties with the consent of the lessor, the proceeds to be shared equally.

Section 13. Orchard. The lessor agrees to furnish a sprayer and the poison for spraying the fruit trees, and the lessee agrees to perform all the labor of spraying and pruning said trees. The lessee shall be allowed fruit for family use on this farm only, the proceeds from the sale of the remainder to be shared equally. The lessee agrees to protect the fruit trees from damage by stock.

Section 14. Tile. The lessee agrees to keep the tile outlets open and to replace broken tile, the lessor to furnish the material.

Section 15. Building Repairs and Fence Repairs. The lessor agrees to furnish the necessary material and the lessee to do the necessary work to keep the buildings and fences in good repair, except in the case of extensive repairs necessary to buildings to replace them in whole or in part following damage by elements or by unavoidable accident, or to remodel in such a way as to be in reality a permanent improvement to the farm, in which case the lessor shall pay for the work necessary in making such repairs. Help hired for this purpose shall be boarded by the lessee at a charge of. cents per meal.

Section 16. Hauling. The lessee agrees to haul to the farm

any material needed for repair to fences, building or tiles, and to do all of the usual necessary hauling about the place free of charge. He shall haul to the nearest market, without charge to the lessor, all crops, livestock, or livestock products which are to be marketed.

Section 17. Manure. The lessee agrees to protect from leaching and tramping as far as is practical with the facilities which may be on the farm, all manure produced on said farm, and to haul this manure to such fields and at such times as will be most beneficial to crops and land.

Section 18. Weeds. The lessee agrees to cut all weeds, briars and bushes on cultivated fields, fence rows, ditch banks and road ways, and to keep same cut during each season.

Section 19. Assignment and Subletting. This lease shall not be reassigned by the lessee, nor shall he sublet any part of the farm without the written consent of the lessor.

Section 20. Enforcement of Performance of Agreement. If the lessee shall fail to perform any labor or fail to take care of the farm as provided in any of the covenants of this lease, the lessor may hire others to perform such labor or repair the damage due to such neglect, and charge the cost of such labor or the amount of such damage, or both, to the lessee, the amount of such charge to become a prior lien on the undivided one-half interest in stock and crops of the lessee.

Section 21. Forfeiture and Arbitration. If the lessee shall fail to perform the labor or exercise the care agreed upon to such an extent as to threaten or cause serious injury to crops, stock or farm, the lessor shall have the right to re-enter and take full possession of the farm, and the lessee shall peaceably vacate the premises. The differences between the two parties shall be referred to a board of three arbitrators, one to be chosen by each party and the third by these two. The decision of these arbitrators shall be final and binding upon the parties of this contract.

Section 22. Clover Seeded, Ground Plowed, etc. Upon the termination of this lease the lessee agrees to leave as much clover and alfalfa seeded, as much land in meadow, and as much ground plowed as when he took possession of the farm, this being understood to be acres of clover, acres

of alfalfa, acres of meadow and acres of plowed ground.

Section 23. Lessee to be Reimbursed for Limestone, Fertilizer, etc. In case of the termination of this lease before the lessee shall have secured the just benefits from any expense he may have in good faith put upon the farm, the lessor shall reimburse him to the amount such expense would benefit an incoming tenant.

If raw rock phosphate or ground limestone has been applied during this lease, the lessee shall be reimbursed by the lessor for his share of such limestone or rock phosphate still in the ground as follows:—if only one crop has been grown since the application the lessee shall receive three-fourths of the total cash cost of his share of such material applied; if two years' crops have been grown he shall receive one-half, and if three years' crops have been grown, one-fourth of said cost. In addition the lessor shall reimburse the lessee for that portion of the lessee's cost of hauling and distributing from which he has not yet benefited. This reimbursement for hauling shall be at the following rates per ton: if no crop has been grown since the application for limestone and for rock phosphate; after one year's crop for limestone and for rock phosphate; after two year's crop for limestone and for rock phosphate; after three years' crops for limestone and for rock phosphate. No reimbursement shall be made for limestone or rock phosphate after four years' crops have been grown.

If acid phosphate, complete fertilizer, or other readily available fertilizer has been applied at the rate of three hundred pounds or less per acre, and one crop has been grown since its application, no reimbursement shall be made to the lessee for his share of such fertilizer, but if such fertilizer has been applied at the rate of more than three hundred pounds per acre and only one year's crop grown since the application, the lessor shall reimburse the lessee for fifty per cent of the lessee's share of the cash cost of such fertilizer in excess of three hundred pounds.

For applying barnyard manure, the lessee shall be reimbursed in full for a reasonable cost of application (not including

value of manure) in case he leaves the farm before a crop is grown on such manured land; in case one crop has been grown he shall receive one-half, and in case two crops have been grown he shall receive one-fourth, of the cost of applying such manure.

The lessee shall be reimbursed for any large amount of work or large expense put on buildings, fences, or other improvements, when failure to receive same would be a manifest injustice to said lessee.

From the reimbursement as determined above shall be subtracted \$. which is agreed as the value, figured according to the above rules, of one-half of the fertilizer and lime unused in the soil, and of the cost of applying such material and applying manure still unutilized in the soil at the time the lessee takes possession of the farm. If this amount is greater than the amount the lessor should reimburse the lessee as determined above in this section, the two amounts shall be considered as balancing each other and no reimbursement shall be made.

The lessee shall present in writing his claim for all reimbursement upon the termination of this lease, and if no agreement upon the termination of this lease, and if no agreement can be reached the matter shall be submitted to three disinterested parties chosen as provided in section 21 of this lease. The decision of these arbitrators shall be final and binding upon the two parties to this contract.

Section 24. Final Settlement. Upon the termination of the lease all partnership property shall be sold at public auction or private sale, or otherwise disposed of to the best interest of the two parties.

Section 25. Accounts and Inventories. The lessee shall make a detailed inventory of all partnership property upon the first of each. during the continuance of this lease. In making this inventory all farm feeds shall be valued at their market price, less the approximate cost of hauling to market. Purchased prepared concentrates shall be valued at purchase price plus cost of hauling to farm.

The lessee shall keep accurate accounts of all transactions pertaining to the farm business, using for this purpose, and

for the inventories above mentioned, the Purdue Farm Record Book, unless he prefers some other system approved by the lessor.

Such inventories and accounts shall at all times be accessible to the lessor.

Section 26. Ingress and Egress. The lessor shall have the right of ingress and egress to all parts of said farm for any purpose not in conflict with the lessee's right of quiet enjoyment.

Section 27. In Case of Death. If lessee shall die during the term of this lease the lessor shall have the right to retake possession of said premises, to employ such labor as may be necessary to perform the work which the lessee should have performed, deduct the cost of such labor from the lessee's interest in the crops and livestock or from the proceeds to be derived from their sale, and pay the balance to the representatives of said lessee.

In witness whereof the said lessor and lessee have hereunto set their hands on the.....day of....., 19...

.....Lessor.

.....Lessee.

Notes on Crop Share Farm Lease

(Notes and Lease prepared by Professors LYNN ROBERTSON and M. L. FISHER of Purdue University.)

In this crop share lease the tenant is given special inducement to keep livestock. One of the greatest faults of most cropshare methods of rental is that the landlord's share of crops is sold from the farm and the tenant keeps only enough livestock to consume his own share of the crop. This is usually not enough livestock to keep up the fertility of the land or to give the tenant the most profitable farming business. Farm records in Indiana show that over a period of years the most profitable systems of farming are those in which sufficient livestock is kept to consume most of the crops produced in a

normal year. The livestock keeps up the fertility of the soil economically, utilizes roughage that cannot be marketed directly to advantage and gives more efficient use of man and horse labor by furnishing employment at times when work is not needed on crops.

On a rented farm the amount of livestock kept, and in fact, the entire farming system followed, depends largely on the lease used. This lease is therefore written with the thought of encouraging the tenant to keep considerable livestock by the following provisions:

(1) The tenant must have at least a certain acreage in legume hay and can have as much of this hay for feed as he has livestock to which to feed it economically. If he does not feed all the hay, the receipts from its sale are shared equally with the landowner.

(2) The tenant has the privilege of buying the landlord's share of corn and small grains at slightly less than market prices, for feeding on the farm, but if he does not purchase it for feeding he must deliver it to market for the landlord.

These two provisions are somewhat new in Indiana, but the value of the first of these inducements has been demonstrated by over fifty years of successful leasing on fifty-six farms in another State (see U. S. Farmers' Bulletin 437).

Although these provisions may seem to favor the tenant, the landlord who gives these inducements will benefit on account of the increase in fertility of the farm, his greater profits through increased crop yields, and his having a tenant who is satisfied in following a profitable system of farming.

This contract further differs from ordinary crop-share contracts in the following ways:

(1) Instead of having the same division of all crops, the crops are divided more nearly in proportion to the tenant's and landlord's cost of production. Thus the tenant gets a larger share of such intensive crops as potatoes, tomatoes and tobacco than of general crops because his labor expense on these crops is proportionately higher.

(2) The tenant upon leaving the farm is reimbursed for unexhausted improvements he puts on the place. In this way the tenant is encouraged to improve the farm, knowing that if

it becomes necessary for him to leave earlier than expected he will be reimbursed for such improvements.

Although this contract provides that the tenant receive fruit for family consumption before the fruit crop is divided, such a practice is merely a customary inducement that the landlord gives to secure a good tenant, and if the landlord lives near the farm and wants an equal amount of fruit for his own family there is no reason why the contract should not provide this.

It must be recognized that the provisions of this lease or any other lease, will need modifying to fit varying conditions. In a general way the landlord's furnishing of land is supposed to offset the tenant's operating expenses, the largest of which is labor. Where land is very productive and high priced, the landlord's contribution is high in proportion to the tenant's, as the tenant's expense does not increase in the same proportion as the increase in quality of land. Vice versa if the landlord furnishes poor low-priced land, his contribution is low in proportion to the tenant's, as the work in operating a poor field is nearly as great as and often greater than in operating a good field. Therefore on very good or very poor land, the division of investment, operating expenses, or share of crops should be varied to meet the conditions.

Farm Lease Contract

CROP SHARE (Livestock Encouraged).

THIS AGREEMENT, made, 19 . . ., between
 of, lessor, and, of
 lessee,

WITNESSETH, that the said lessor has leased to said lessee his farm of acres situated and described as follows

 for the purpose of farming, subject to the conditions hereinafter set forth.

1. *Period and Renewal.* This lease is for a one-year period beginning, 19 . . ., but becomes automatically renewed from year to year until terminated by mutual consent, by failure of either party to keep the covenants of this agreement,

or by written notice six months previous to any of its termination on that date.

2. *What Each Party Shall Furnish.* The lessee shall furnish labor, work horses, machinery, seed (except clover and grass seed, half of which shall be furnished by each party), twine, machine and fuel expense for threshing, hulling, shredding, silo filling and baling. The lessor shall pay for limestone used and the lessee shall haul and distribute this lime free of charge to the lessor.

Fertilizer shall be furnished by the lessor and lessee in the proportion in which they share in the crops on which such material is applied as hereinafter provided.

3. *Crops and Seed Treatment.* The crops to be grown and the soil treatment to be given on each field of the farm during the continuance of this lease shall be such as are mutually agreed on except that the lessee hereby agrees to sow each year between and acres to clover, or to a mixture of clover and timothy in which there is at least parts of clover to parts of timothy. In case this seeding of clover or clover and timothy does not result in a stand worth leaving for hay the lessee shall sow to cow peas, soy beans, or other legume satisfactory to the lessor, the land on which said clover failed. The seed for such crop shall be furnished one-half by each party. Not over acres shall be in pasture or hay any one year.

4. *Division of Crops.* The crops raised shall be divided as follows: Each party shall receive one-half of all wheat, oats, rye, barley, corn, clover seed, or soy bean seed. If any tomatoes or potatoes are grown except in the garden plot the lessor shall receive one-third and the lessee two-thirds of such crops.

The lessee shall receive for feed for his livestock including horses, such hay raised on the farm as is needed for good results with such livestock, but shall not waste such hay by bedding or excessive feeding. If not enough livestock is kept to consume economically all the hay the remainder shall be sold and the proceeds shared equally.

Inasmuch as the lessee shall have been at no expense in connection with putting in clover in the acre field in clover, the first year he shall pay the lessor \$ per acre

for every acre of clover cut for hay in This hay shall then be divided as provided above.

5. *Pasture.* The lessee shall pay the lessor \$. per acre for all pasture land on which no hay crop, grain crop or cultivated crop is grown during any one year. He may without charge, pasture aftergrowths as is customary in good husbandry, but he shall not let his stock run on fields when the pasturing or trampling will pack or in other ways injure said fields or crops. The lessee shall not pasture hay land previous to the first cutting in any year.

6. *Straw and Manure.* No straw, corn fodder or manure shall be sold from the farm, nor shall any straw piles be burned. The lessee agrees to protect all manure from leaching and trampling as far as is practical with the facilities on the farm, and to haul this manure to such fields and at such times as will be most beneficial to crops and land.

7. *House, Garden.* The lessee shall have the house, and a truck patch, the latter not to exceed for the use of his family. He agrees to keep the premises in neat and tidy condition, and to protect all vines, shrubs, and shade trees from injury.

8. *Fuel for Use on the Farm.* The lessee shall have the down and dead timber for fuel, but shall not use for fuel any logs suitable for saw timber, or any sawn timber or rails, nor shall he cut down live trees.

9. *Building Repairs and Fence Repairs.* The lessor agrees to furnish the necessary material and the lessee agrees to do the necessary work to keep buildings and fences in good repair, except in case of extensive repairs necessary to buildings to replace them in whole or in part following damage by elements or by unavoidable accident, or to remodel in such way as to be in reality a permanent improvement to the farm, in which case the lessor shall pay for the work necessary in making such repairs. Hired help for this purpose shall be boarded by the lessee at a charge of per meal.

10. *Hauling—Purchase of Lessor's Share of Crop.* The lessee agrees to haul to the farm any material needed for repair of fences of buildings and to do all the necessary hauling about the place free of charge. He shall care for and deliver to the

nearest market the lessor's share of crops, provided that the lessee has the privilege of purchasing the lessor's share of corn and small grain for feeding on the farm at five per cent less than the market price at the time the lessor wishes to market. The lessee agrees that if he purchases any crop from the lessor his own share of said crop as well as the share purchased from the lessor shall be used on said farm for feed or seed, or he shall pay the lessor the value of the reduction in price from which he benefited on the amount of crop sold.

11. *Weeds, Tile.* The lessee agrees to keep weeds and briers cut on the farm, to keep tile outlets open and to replace broken tile, the lessor furnishing the material.

12. *Orchard.* The lessor agrees to furnish the sprayer and the poison for spraying the fruit trees and the lessee to perform all the labor of spraying and pruning the trees. The lessee shall be allowed fruit for family use on this farm only, the proceeds from the sale of the remainder to be shared equally. The lessee agrees to protect the trees from damage by stock.

13. *Assignment and Subletting.* This lease shall not be reassigned by the lessee, nor shall he sublet any part of the farm without the lessor's written consent.

14. *Enforcement of Performance of Agreement.* If the lessee shall fail to perform any labor or fail to take care of the farm as provided in any of the covenants of this lease, the lessor may hire others to perform such labor or repair the damage due to such neglect, and charge the cost of such labor or the amount of such damage, or both, to the lessee.

If the failure is sufficient to cause or threaten serious injury to crops or farm, the lessor shall have the right to re-enter and take full possession of the farm, and the lessee shall peaceably vacate the premises. The differences between the parties shall be referred to a board of three arbitrators, one to be chosen by each party and the third by these two. The decision of these three shall be binding upon the parties to this contract.

15. *Lessee to be Reimbursed for Limestone, Fertilizer, etc.* In case of the termination of this lease before the lessee shall have secured the just benefits from any expense he may have in good faith put upon the farm, the lessor shall reimburse him to the amount such expense would benefit an incoming tenant.

If raw rock phosphate or ground limestone has been applied during this lease, the lessee shall be reimbursed by the lessor for his share of such limestone or rock phosphate still in the ground as follows: if only one crop has been grown since the application the lessee shall receive three-fourths of his total expenditures for such material applied, including the cost of handling the whole application; if two years' crops have been grown he shall receive one-half, and if three years' crops have been grown, one-fourth of said cost. The cost of hauling shall be considered per ton. No reimbursement shall be made for limestone or rock phosphate after four years' crops have been grown.

If acid phosphate, complete fertilizer, or other readily available fertilizer has been applied at the rate of three hundred pounds or less per acre, and one crop has been grown since its application, no reimbursement shall be made to the lessee for his share of such fertilizer, but if such fertilizer has been applied at the rate of more than three hundred pounds per acre and only one year's crop grown since the application, the lessor shall reimburse the lessee for fifty per cent of the lessee's share of the cash cost of such fertilizer in excess of three hundred pounds.

For applying barnyard manure, the lessee shall be reimbursed in full for a reasonable cost of applying (not including value of manure) in case he leaves the farm before a crop is grown on such manured land; in case one crop has been grown he shall receive one-half, and in case two crops have been grown he shall receive one-fourth, of the cost of applying such manure.

The lessee shall be reimbursed for any large amount of work or large expense put on buildings, fences, or other improvements, when failure to receive same would be a manifest injustice to said lessee.

From the reimbursement as determined above shall be subtracted \$. which is agreed as the value, figured according to the above rules of one-half of the fertilizer and lime unused in the soil, and of the cost of applying such material and applying manure still unutilized in the soil at the time the lessee takes possession of the farm. If this amount is greater than the amount the lessor should reimburse the lessee as determined above in this section, the two amounts shall be

considered as balancing each other and no reimbursement shall be made.

The lessee shall present in writing his claim for all reimbursement upon the termination of this lease, and if no agreement can be reached, the matter shall be submitted to three disinterested parties chosen as provided in section 16 of this lease. The decision of these arbitrators shall be final and binding upon the two parties to this contract.

16. *Accounts and Inventories.* The lessee shall make a detailed inventory of all farm property upon the first of eachduring the continuance of this lease and shall keep accurate accounts of all transactions pertaining to the farm business, using for this purpose, and for the inventories above mentioned, the Purdue Farm Record Book, unless he prefers some other system approved by the lessor.

Such inventories and accounts shall at all times be accessible to the lessor.

In witness whereof the lessor and lessee have hereinto set their hands.....19...

Witnesses

.....
.....

Lease of Department in Department Store

AGREEMENT made.....between....., hereinafter called the Main Store, and....., hereinafter called the Department, WITNESSETH:

WHEREAS, the Main Store is desirous of leasing a certain part of its premises for occupation of a.....department to the Department and the Department is desirous of securing such space from the Main Store;

Now, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties agree as follows:

1. The Main Store hereby leases to the Department, and the Department does hereby agree to accept such lease, and the Main Store agrees to permit the Department to occupy the space as hereinafter set forth. The terms and conditions of the use and occupation of said space by the Department

shall extend from.....to and including..... The space to be occupied is to be approximately.....in the building known as....., at.....in the City of....., State of....., subject to change of location whenever requested by the Main Store. The Main Store agrees that the Department shall.....have the use of such space for the sole purpose of selling at retail on said premises and not elsewhere.

2. The Department agrees to keep open passageways at all times through and from said department to elevators and aisles of said store without obstruction of any kind, and also agrees to devote sufficient open space for cashier and bundle desks to accommodate said Department at such place therein as said Main Store shall from time to time direct.

3. The Department covenants, promises and agrees to carry in stock in said Department at all times a full line of new and salable stock of such of the merchandise hereinbefore described which it has the right to sell and of the type prevailing for the time being and the amount of such stock which shall thus be carried shall be fully complete and ready for sale at all times during the business hours of the store and the Department agrees that it will mark all goods in said Department in plain figure and strictly maintain one price in the sale of goods in its Department and that it will not sell its merchandise for a higher price than asked for similar goods by other stores and whenever the asking price thereof be too high, it will make such reduction as the Main Store shall require and will conduct its department in a proper and becoming manner and in accordance with the rules and regulations of the store as prescribed from time to time by the Main Store.

4. The Main Store agrees to furnish the Department adequate heat and light for said premises, said light to be furnished by the Main Store to be reasonable light for lighting purposes.

5. The Department agrees to advertise the goods sold by it in said premises through the advertising department of said store in connection with the advertisements of said Main Store in such mediums as are selected to be used by the Main Store, such advertisements to be in form satisfactory to the

Main Store and said advertisements to be paid for by the Department at the cost thereof, to the Main Store, and the Department agrees that it will advertise its goods judiciously for the furtherance of its business and that the Department agrees to expend not less than of its gross sales for such advertisements.

6. In consideration of the foregoing, the Department agrees to use the premises in a becoming and proper manner and solely for the purposes above set forth and for no other purposes, that it will not assign or underlet said premises or any portion thereof or permit any other person or persons, corporation or corporations to occupy the same without the written consent of the Main Store therefor first had and obtained and that at the end of said term or any extension thereof, or on the sooner termination of this lease, it will quietly and peaceably surrender up possession of said premises of the Main Store, its successors and assigns, in as good order and repair as the same now are or may hereafter be put in, reasonable wear and tear of the elements excepted; that it will not put up any signs on the inside or outside of the said premises without the written consent of the said Main Store, first had and obtained therefor, nor contract any bills in the name of the said Main Store or in any way, directly or indirectly, involve the said Main Store in any expense or liability; and that all sales made on said premises by said Department, shall be made in the name of said Main Store and returns thereof immediately made to said Main Store by the person making such sales.

7. The Department agrees to pay, as rent for said premises (. . . %) per cent of all sales made on said premises, by said Department, its officers, agents and servants, and agrees to pay the cost of all advertising of its merchandise and all other expenses for maintaining its business. The Main Store shall have the right to deduct all such amounts which may be due the Main Store for rent and other expenses paid by the Main Store for the Department, from the sales of the Department; and the Main Store agrees to pay the remainder of said sales to the Department during the day following that in which such sales are received.

8. The Department and its employees shall at all times during the term of this lease or any extension thereof be governed by all rules prescribed by the Main Store for the management of its stores and shall conduct its said department with due regard to the rights of the Main Store.

9. The Department guarantees that the net sales in the department which are hereby leased to the Department shall be no less than.....dollars in each year during the term of this lease; and that the Main Store is hereby authorized by the Department to deduct from the sales a pro rata amount each day during the continuance of this agreement so that the amount deducted for rent each year shall be no less thandollars in each year and that at the end of each week an accounting and settlement shall be made and if the sales of said Department shall be more than.....dollars for said week, the Main Store shall have the right to deduct the difference due it under this agreement from the sales.

10. The Department further agrees that it will allow a discount of.....(.%%) per cent to all employees of said store and such other customers who are entitled to discount under the regular rules of the Main Store.

11. The Department agrees that in the use of its fixtures and in the display and arrangement of its merchandise, it will at all times submit to the dictation and direction of the Main Store with respect to all matters of taste and style and manner of arranging the merchandise in its Department.

12. The Department shall not employ any person in the Department herein leased, who is objectionable to the Main Store and upon notice from the Main Store, the Department agrees to remove promptly any such objectionable parties from the premises.

13. The Main Store shall have the right to make any and all such changes in the premises or Department whenever the Main Store shall deem necessary.

14. The Department agrees that it will furnish a competent manager to be present at all times during business hours of the Main Store, who shall devote his entire time and attention for the purpose of promoting and furthering the business of the department which is herein leased to the Department.

The keys of said store shall be at all times in the possession of the Main Store.

15. The Main Store shall not be liable for damage of any kind or nature to the Department or any person employed about said Department by the Department or to its officers, agents or customers, and the Department agrees to carry at its own expense, liability and fire insurance for said premises.

16. In case said Department shall fail to carry out any of the terms of this lease or agreement on its part to be kept and performed, or for any reason be unable to properly conduct its business, said Main Store may terminate this lease and all rights of said Department to occupy or use any of the premises aforesaid shall thereupon end and determine, and said Department and all persons claiming title under it, shall at once quietly and peaceably vacate said premises; but said termination of said lease shall not in any way prevent or interfere with said Main Store from recovering from said Department any rent or other payments due under any of the provisions hereof or any damages theretofore accrued for any breach of any of the terms of this agreement by said Department.

17. In the event proceedings in bankruptcy are commenced against either of the parties, or either is adjudicated a bankrupt, or a receiver of either is appointed and qualifies, then in such event, either of the parties as the case may be, may terminate this agreement and all further rights and obligations thereunder, by three days' notice in writing to the other, in which event, upon the expiration of said three days from the mailing of said notice, this lease shall terminate, expire and come to an end.

18. The Main Store agrees to furnish to the Department, from time to time, at the discretion of the Main Store, space in its show window for display purposes of the merchandise of the Department. Said space shall be subject to directions of the Main Store.

19. The Department agrees to pay to the Main Store, on the execution of this agreementdollars to be applied by the Main Store towards the payment of the last month's

rental of this agreement, receipt of which is hereby acknowledged.

20. This agreement shall be binding upon the heirs, executors successors and assigns of the parties.

Option for renewal of lease

Williston, Sections 44, 53, 61, 140, 415, 620, 873, 1405, 1431, 1441, 1940;

Probst v. Rochester Steam Laundry, 171 N. Y. 584, 64 N. E. 504;

Giordano v. Zap, 115 Misc. 619, 189 N. Y. Supp. 88;

Moran v. Wellington, 101 Misc. 594, 167 N. Y. Supp. 465.

The Tenant is hereby granted an option of a lease upon the demised premises for an additional term of years at the expiration of the term of this lease at the rental of \$. per to contain covenants and agreements the same as this lease except as to the amount of rent and the term, provided that the Tenant shall give the Landlord days' written notice previous to the expiration of this lease of his intention to exercise this option.

Guaranty of Lease

Williston, Sections 11, 62, 69, 97, 113, 142, 157, 413, 452-455, 457, 459-463, 465, 467, 468, 470-477, 482, 576, 625, 888, 1237, 1251, 1253, 1945, 1991;

Lindenberg v. Howland, 187 N. Y. Supp. 917.

Evansville National Bank v. Kaufman, 93 N. Y. 273;

Stillman v. Northrup, 109 N. Y. 473, 17 N. E. 379.

In consideration of the letting of the demised premises within mentioned to the tenant and other valuable considerations, I hereby covenant and agree to and with the Landlord and his legal representatives, that if any default shall be made by the Tenant in the payment of the rent or in the performance of any of the covenants, conditions and agreements contained in the within lease on the Tenant's part, that I will pay the said rent or any arrears thereof, and also any and all damages which may arise in consequence of the nonperformance of said cove-

nants conditions and agreements or any of them without requiring any notice of any such default from said Landlord.

Guaranty of Lease.

WHEREAS,, a corporation of the State of New York (hereinafter called the "Guarantor"), requires for its corporate business the control of the premises described in the lease hereto annexed, bearing even date herewith, made between as Landlord (hereinafter called the "Landlord"), and as Tenant, which control the Guarantor can secure without requiring an immediate outlay of its own funds if said lease be made to said Tenant, who has agreed, in the event of obtaining such lease, to let to the Guarantor space in said premises for the purpose of its corporate business and not to permit any other portion of the premises described in said lease to be occupied for any similar purpose; and

WHEREAS, the Landlord has refused to grant said lease to said Tenant unless this agreement of guaranty is made simultaneously therewith;

NOW, THEREFORE, the Guarantor, for and in consideration of the sum of One Dollar to it in hand paid by the Landlord, and in order to secure the control of the said premises as aforesaid, and in order to induce the Landlord to make and grant said lease, does hereby guarantee unto the Landlord and to its successors and assigns the full and faithful performance of all the terms, conditions, covenants and provisions of said lease on the part of said Tenant therein, to be performed and the full and prompt payment of all moneys that may grow due thereunder to the Landlord or to its successors or assigns. The Guarantor hereby expressly waives any and all notice of any default whatsoever in any of said terms, conditions, covenants, provisions or payments. The Guarantor hereby expressly agrees that no future waiver by the Landlord of any right under said lease or future consent given by the Landlord or future agreement modifying said lease or any of its terms, conditions, covenants or provisions shall in any manner operate to release or lessen the liability of the Guarantor hereunder.

MOTION PICTURE CONTRACTS

Employment Contract—Motion Picture Director

AGREEMENT, made and entered into this.....day of.....
....., by and between....., a corporation duly
organized and existing under and by virtue of the laws of the
State of....., hereinafter called the "Employer," and
.....of the.....County of..... and State of
....., hereinafter called the "Employee," WITNESSETH:

For and in consideration of the sum of One Dollar, and other
good and valuable considerations, each to the other paid at
or before the ensembling and delivery of these presents, the
receipt whereof is hereby acknowledged, and in further con-
sideration of the covenants, conditions and agreements herein-
after contained and set forth, the parties hereto have agreed,
and do hereby covenant and agree, as follows:

1. The Employer shall, and hereby does employ the Employee
as a DIRECTOR in and about its business of producing plays
and scenes, and thereof taking, making and producing moving
picture films, for and during the term herein provided, upon the
express condition that all duties, obligations and agreements on
the part of the Employee assumed and entered into, shall be
fully performed and kept. Upon such performance, the Em-
ployer shall pay to the Employee each week a salary or com-
pensation of.....

2a. The Employee agrees that he will, during the term afore-
said direct, exclusively for and in the moving picture produc-
tions of the Employer, and that he will not during said term
direct, nor act or appear or participate in any moving picture
production or productions whatsoever, or render any services
of any kind or character in any way connected with theatrical
or moving picture productions, art or business for any other
person, persons, firms or corporations; or make any public
or private appearances in any way connected with theatrical

or moving picture representations, productions or shows, without the written consent of the Employer.

(b) The Employee agrees that he will not, during the period commencing with the date of this agreement and expiring three months after the completion of the last motion picture directed by the Employee, pursuant to this agreement, cause or permit the use of his name or the advertising or publicity thereof in connection with any motion pictures other than those directed by the Employee pursuant to this agreement, excepting, however, motion pictures completed before the date of this agreement.

3. The Employee further agrees that he will direct, as directed by the Employer, in and for the production of plays and scenes to be produced upon any brand or brands of moving picture film now manufactured or which hereafter may be manufactured by the Employer or otherwise, and such services being matters of art and taste and subject to changing conditions, agrees to perform and render the same to the full satisfaction of the Employer at all times, and that he will perform such services wherever required or desired, as the Employer may direct, or find necessary or convenient in or to the staging of plays or scenes for such moving picture productions. In the event that the Employee shall be required to direct in any place other than the City of or its environs, the Employer shall pay the traveling expenses of the Employee excepting hotel bills.

4. And the Employee does hereby expressly authorize the photographing by the Employer of any and all his plays, of any and all kind or kinds, and the production and reproduction thereof by photography, printing and all other methods; and of, in and to the same and all or any parts thereof, the Employer shall have the sole control, right, title and property, and right of copyright therein and thereto, as fully and completely, and to all intents and purposes, as the Employee might, could or would have enjoyed the same had not this agreement been made and entered into, and during said term and thereafter in respect of any and all matters and things, rights and interests of every kind then or therein performed, accruing, arising, or taking place, the Employee shall and will neither authorize

nor attempt to give any authorization or transfer of or respecting any right, privilege, title or interest in or to any of the same or any matter or thing whatsoever.

5. In the event that by reason of sickness, the Employee shall become incapacitated from performing the terms of this agreement, thereupon the same shall be suspended both as to services and compensation, but the Employer, at its option, in such case, shall have the right because of such inability to terminate this agreement.

6. The Employee further agrees that if, for any reason, the obligations, undertakings, covenants and conditions herein set forth and on his part to be performed, or any of the same, shall not be kept, carried out and performed in a manner satisfactory to the Employer, then and in that event, the Employer, at its option, may declare this contract terminated, and all rights of the Employee thereunder shall thereupon cease and determine, saving his right to compensation for any and all time during which services shall have been actually performed as aforesaid; his right, however, shall be in addition, and not to the exclusion of the right of the Employer to enjoin the Employee from performing services for any other person or persons, firms or corporations, during the term in this agreement set forth and limited, and shall not preclude the Employer from resorting to any other remedy, legal or equitable.

7. The services of the Employee being unique and peculiar in their nature, the Employee hereby expressly agrees that the Employer shall be entitled to injunctive or other proper equitable relief to prevent a breach of this agreement by him. This provision, however, shall not be construed as a waiver of any other rights that the Employer may have in the premises by an action for damages or otherwise, but shall be in addition thereto.

8. This contract and all the provisions herein contained for the enforcement thereof shall be construed and enforced according to the laws of the State of.....

9. This agreement shall commence on the.....day of, and shall remain in force and effect for the term offrom said day, and shall inure to the benefit of and be binding upon the successors and assigns of the party of the first part.

Employment of Actor for Motion Picture

AGREEMENT made between herein-after designated as the Employer, and hereinafter designated as the Employee.

WHEREAS, the Employee is a motion picture actor and the Employer is engaged in the business of producing motion pictures, and

WHEREAS the Employer recognizes that the Employee's services, talents, and abilities as a motion picture actor are excellent, rare, unique, uncommon and of a peculiar and extraordinary nature, and will be of great value to the Employer in the prosecution of its business, and

WHEREAS the Employer realizes that these talents, services and abilities of the Employee, being so unique, cannot be duplicated, and knows that he (or she) has these said qualities, and

WHEREAS, the Employee recognizes that it is for these reasons that the Employer seeks to engage him (or her) in its service, WITNESSETH:

1. The Employer hereby engages the Employee as a motion picture actor to act, play, perform and take part in any capacity designated by the Employer in motion picture productions of any nature whatsoever, including rehearsals therefor as ordered by the Employer at the studio or studios of the Employer in or on designated location, or at any other place required by the Employer for a period of years, commencing and ending for a salary of years, commencing and ending for a salary of weekly.

2. The Employee accepts said employment and promises and agrees to so act, play, perform and take part in the manufacture and production of motion pictures by the Employer as herein provided for at the compensation above mentioned.

3. The Employee agrees to attend daily during established working hours (whether cast or not) for the performance of his duties wherever and whenever required, it being expressly agreed:

(a) No excuse from work, duties or attendance at the studio or on location or other place as required hereby shall be deemed good or sufficient unless the said excuse be in writing signed by the Assistant Director or Directors of the production in which the Employee is engaged at the time, and it is mutually agreed, and the Employee hereby acknowledges that he has notice, that no agent of the Employer, whether he be Director or Assistant Director or other agent has authority to grant such written excuse for a period of more than one day, and that in no event shall a written excuse for more than one day be deemed authorized.

(b) Inclement weather shall be no excuse for non-attendance hereunder.

(c) The Employee agrees to abide by, obey and perform any and all orders, requests, communications, rules, and regulations of the Employer.

(d) The Employee agrees that his method, manner and way of acting and performing shall at all times be subject to the approval and satisfaction of the Employer.

(e) It is agreed that the enumeration of the duties of the Employee as hereinbefore stated is merely illustrative and not exclusive of the other duties of the Employee which may arise.

(f) The Employee agrees that during the term of this contract he shall devote all his time, talents and services exclusively to the use and benefit of the Employer.

(g) The Employee shall provide at his own expense all modern wardrobe necessary to properly dress for parts in which he may be cast as directed and instructed by the Employer.

(h) The Employer shall provide at its own expense all costuming for the Employee. The Employer shall be the sole judge as to what clothes are modern clothes and what clothes are costuming.

4. It is agreed that during the continuance of this contract the Employee will not perform, act, play or take part in any rehearsals, plays, acts, scenes or motion pictures, or engage in any pursuit in any way whatsoever, connected or allied with

the theatrical or the motion picture business, for any other person, firm or corporation, and that he will not assist in any way directly or indirectly any other person, firm or corporation in the rehearsal, manufacture or production of motion pictures or stage plays during the term hereof, and that during the term of this contract he will not engage in the production of motion pictures except for the Employer as provided for herein.

5. The Employee agrees that he will not, during the period commencing with the date of this agreement and expiring three months after the completion of the last motion picture in which he appears, pursuant to this agreement, cause or permit the use of his name or the advertising or publicity thereof in connection with any motion pictures other than those in which he appears pursuant to this agreement, excepting, however, motion pictures completed before the date of this agreement.

6. The Employee further agrees that during the life of this contract he will not appear in any public or private performance of any nature whatsoever, except by the written consent of the Employer.

7. The Employee hereby grants to the Employer the privilege or option to continue this contract for an additional period of after the expiration of the original term hereof, provided that during the original term of this contract the Employer pays to the Employee in addition to the salary hereinbefore mentioned per week as compensation and consideration for said privilege and option for extending the period of this contract for said additional term and upon payment of such sums this contract to remain in full force and effect for the option period hereinbefore mentioned, providing, however, that the Employer notify the Employee in writing of its intention to avail itself of such option, at least days before the expiration of the original term of this contract.

8. It is agreed that the salary of the Employee for such additional period hereinbefore stated, if the Employer avail itself of its option, shall be dollars per week.

9. The Employee grants to the Employer the right to advertise the Employee in connection with its motion picture pro-

ductions and to use photographs of the Employee for such advertising and publicity purposes.

10. No representations made by any representative or agent of the Employer, or by any other person, shall be binding or be considered a part of any agreement between the Employer and the Employee unless herein expressly contained, and no variations or modifications of this agreement shall be binding on the Employee unless in writing signed on the part of the Employer by one of its officers who it is duly mutually agreed is the only person authorized to sign the same on behalf of the Employer.

Contract with Salesman to Procure Rentals of Motion Pictures

AGREEMENT, made this.....day of....., between.....,(hereinafter designated as the PRINCIPAL), and....., (hereinafter designated as the SALESMAN), WITNESSETH:

1. The Salesman shall enter into the services of the Principal as its salesman, for a period of one year from the date hereof, and said salesman shall, subject to the performance of the duties, provisions and conditions herein agreed to be kept and performed by the Salesman, devote his whole time, attention and energy to the performance of his duties herein mentioned, and shall not, without the consent of the Principal, either directly or indirectly, alone or with others, be connected with, or concerned in, any other business or pursuit, whatsoever, during said term of one year.

2. Said Salesman shall be assigned by the Principal to the territory comprising....., which Salesman shall take, perform and carry out instructions, from time to time, as to the price, rental or license fees at which any or all films controlled by the Principal shall be exploited in any theatre, or in said territory to which such Salesman shall be assigned; to solicit himself, or in connection with any agent, salesman or representative of the Principal,

bookings for the exploitation of films controlled by the Principal to perform and observe all rules and regulations which shall from time to time be made by the Principal for the sale and exploitation of all film, controlled by the Principal and specifically perform and carry out such other duties, from time to time, as shall be assigned to him by the Principal, its officers and duly authorized representatives.

3. It is distinctly understood and agreed, that all deposits, moneys, checks, notes, drafts, or orders for the payment of money, and all property that may be received as a deposit or otherwise by said Salesman in the performance of the duties and services under this agreement, shall be received, accepted, come to the hands of, and be handled by, said Salesman, as Trustee of the Principal, and all such deposits, moneys, checks, notes, drafts, or orders for the payment of money and all other property, shall be paid and turned over to the Principal, or its representative, immediately upon the receipt thereof, by said Salesman, and in such manner as shall from time to time be directed by the Principal, without any deductions of any nature or kind; and said Salesman is hereby constituted and appointed Trustee for such purpose only.

4. Said Salesman, subject to the control and instructions of the Principal, shall keep and make proper and complete entries in, books to be approved or furnished by the Principal; and said Salesman shall make, from time to time, such reports and shall promptly furnish copies of licenses, contracts or other writings, made for or on account of the booking or exploitation of any films, as shall be required or directed by the Principal, its officers and agents.

5. That the compensation payable to said Salesman, for all services under this agreement, shall be as follows:

(a) A weekly salary of.....Dollars, payable on Saturday of each week.

(b) The travelling expenses of said Salesman while actually travelling for the Principal, and then only, shall be paid by the Principal, which travelling expenses chargeable to the Principal shall not exceed the actual moneys paid therefor by said Salesman, an itemized statement of which travelling expenses, attested by said Salesman, shall be furnished the Principal

weekly, and in no event shall such travelling expenses, exclusive of transportation charges, exceed the sum of \$. per day.

(c) A commission of per centum of all moneys collected by the Principal during the term of employment from business secured by said Salesman, in said territory, payable weekly.

6. Said services may be terminated at any time, by either party giving the other one week's notice, in writing, except in case of unjustifiable conduct, or violation of any of the provisions of this agreement, when said services may be terminated immediately, by the Principal.

Upon the termination of said services by either party, for any cause whatsoever, said Salesman shall be entitled to the above salary and commission accrued and due him up to and including day of termination and not thereafter, and said Salesman shall thereupon release the Principal, turn over all books, accounts, moneys and other property in his possession belonging to the Principal, and this agreement shall come to an end.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed, the day and year first above written.

Contract for Production and Distribution of Motion Pictures.

AGREEMENT made this day of, between of, hereinafter referred to as the Distributor, and of, hereinafter referred to as the Producer, WITNESSETH:

Product.

1. (a) The Producer hereby agrees to produce and deliver to Distributor (..) feature photoplays in not less than (..) nor more than (..) reels averaging (..) feet per reel in length. Each of said photoplays shall be of a high standard of production in respect of acting, action, production, photography, settings, locations, costumes and other details. None of said photoplays shall be of a morbid, gruesome or offensive character, nor shall they

depict action with a class, sex, or sectarian appeal. (If a standard and quality can be agreed on, the following might be added: Each of said photoplays shall be equal in standard and quality to the standard and quality of the photoplay entitled with which both of the parties hereto are familiar.)

Feature Unit.

(b) Two original negatives and one good positive print from each, together with at least (.) still photographs representing different scenes in each photoplay, including the negative film plates of such still photographs, shall constitute a feature unit, and the same are hereinafter referred to as "Feature Unit."

Time of Delivery.

(c) The feature unit for the first of said (.) photoplays shall be delivered to Distributor on or before, and feature units of the succeeding photoplays shall be delivered at intervals of not less than (.) months and not more than (.) months until feature units of (.) photoplays shall have been delivered.

Negatives.

(d) Each of the original negatives and all parts thereof of the respective photoplays when delivered shall be complete;—wholly original and in no part duped negatives;—fully titled and subtitled; and assembled in the proper sequence of scenes and parts. Each negative shall be delivered to Distributor, carefully packed in tin cans, containing not less than (.) nor more than (.) linear feet, and not wound on reels, and due precaution shall be taken in packing to prevent scratching or other injury to said negatives by friction or otherwise, and each can of negative shall be distinctly labeled:

NEGATIVE NO. . . .

(TITLE OF PHOTOPLAY)

PART . . . OF REEL NO. . . .

Each of said original negatives shall be free from scratches, finger-marks, static, or improper devel-

opment and shall be framed uniformly throughout, and in the event that any of the negatives delivered by the Producer to Distributor fails to conform to any of the provisions of clause one of this agreement, the Producer agrees to do all things necessary to make the same meet the requirements of this clause of this agreement at his own expense. Each negative when delivered shall be accompanied by a complete title sheet.

Cut-outs.

(e) The Producer further agrees to deliver to Distributor with each feature unit all of the cut-out parts of the said negatives in addition to the negatives as assembled, such cut-out parts to be delivered to Distributor, packed separately from the assembled negatives and labeled accordingly.

Custody of Negative.

(f) All negatives delivered hereunder shall remain in Distributor's custody and possession during the entire period of exploitation of the respective photoplays, but said negatives shall remain the property of said Producer and shall be returned to said Producer at the expiration of the period of exploitation of the respective photoplays.

Print Requirements.

(g) The positive prints of each photoplay shall be delivered, cut and assembled in proper sequence, conformed to the negatives, with finished main titles and sub-titles, ready for projection on a motion picture screen, with all parts carefully cemented together. All positive prints shall be delivered to Distributors packed in tin cans, and due precaution shall be taken in packing to prevent scratching or other injury to the same. Each can of positive shall be distinctly labeled:

POSITIVE NO. ...

(TITLE OF PHOTOPLAY)

PART ... OF REEL NO. ...

Selvage Number.

(h) The Producer agrees to cause the numbers appearing on the selvage edge of all Eastman negative film indicating the footage of the film,

to be printed on the corresponding selvage edge of the positive print of the respective negative.

Ownership of
Prints.

(i) The aforesaid positive prints, together with all positive prints manufactured by Distributor from the negatives of each photoplay, shall be and remain the absolute property of Distributor, but all positive prints of said photoplay shall be scrapped or destroyed immediately upon the withdrawal of same from circulation.

Still Photographs.

(j) The set of still photographs shall consist of a minimum of (. . . .) different scenes in each photoplay, made on gelatin negative, size eight by ten inches, and arranged in the order of their sequence in the photoplay. Each still photograph shall be accompanied by a title descriptive of the scene in the photoplay depicted. Said set of still photographs shall contain at least closeups showing the most dramatic incidents in the photoplay and shall also contain several closeups of the leading members of the cast in the characters personified by such artists.

Place of Delivery.

(k) Delivery of the feature units shall be made as follows:

1. The negatives shall be delivered to Distributor at or at such other place in the United States as the Distributor may from time to time designate to the Producer in writing.

2. The positive prints and still photographs shall be delivered to Distributor at its home office in

Cutting and
Censorship.

2. (a) Distributor shall have the right to cut, edit, change, re-arrange or eliminate any of the scenes in any of said photoplays at its discretion and shall have the right to change the title or change or eliminate any of the sub-titles in said photoplay.

(b) The main title of each photoplay shall carry the seal of approval of the National Board of

Review. The Producer agrees that should the National Board of Review or similar institution of national character, after reviewing any of said photoplays, require changes to be made, necessitating re-takes, it will make such re-takes at its own expense.

Exploitation Rights. 3. (a) The Producer hereby grants and conveys unto Distributor the sole and exclusive right to lease, license, exhibit, exploit, distribute, traffic in, or otherwise dispose of each of the aforesaid photoplays throughout the entire world for a period of (.) years immediately following the date of delivery to Distributor of the respective feature unit; together with the sole and exclusive right to manufacture or reproduce or cause to be manufactured or reproduced positive prints of the negative of each of said photoplays or any duplicate or reproduction of each such negative or any production based upon the same plot or theme, together with the sole and exclusive right to use during said period of (.) years the title by which the respective photoplay is known or identified.

(b) The Producer hereby agrees that it will not exhibit, exploit or distribute or cause or permit the exhibition, exploitation or distribution of any of the said photoplays in the aforesaid territory or any part thereof, and the Producer further agrees that it will take all necessary steps, by litigation or otherwise, to prevent the exhibition, exploitation or distribution of any prints of any of the aforesaid photoplays in the said territories by any person, firm or corporation other than the Distributor, during the term of this agreement.

Motion Picture
Rights in Story.

4. The Producer hereby represents and warrants that it has acquired, or will, prior to the date of the delivery of the respective feature units, acquire the sole and exclusive motion picture rights for the entire world in the book, story,

scenario, or literary composition upon which each of said photoplays is based and from which it shall have been produced, and warrants that no part of the said photoplay will violate or infringe the trade-mark, trade-name, copyright, literary, artistic, or dramatic right, or the personal, private, civic, or property right, or the right of privacy of any person, firm or corporation, and the Producer agrees at its own expense to indemnify, defend and hold harmless the Distributor from any claim or demand, whether justified or unjustified, which may be made, held or asserted against the Distributor, its lessees or licensees, whereby it is claimed, alleged or asserted that the exercise by Distributor, its lessees or licensees to the fullest degree of any of the rights hereby granted to Distributor infringes or violates any of the rights included and specified in the foregoing warranty. The Producer further agrees that Distributor shall have the right to participate in the defense of any such action or actions and hereby agrees to reimburse the Distributor for any necessary expenses incurred by the Distributor in the defense thereof.

Number of Prints.

5. (a) Distributor hereby agrees to cause to be manufactured from the negatives of each photoplay delivered hereunder, such number of first class positive prints, not less than (..) and not exceeding (..) as in Distributor's opinion shall be necessary to properly exploit the respective photoplay in the United States of America, and such number of positive prints as may be necessary to fulfill the requirements of Distributor's agents or correspondents in the Dominion of Canada and foreign countries.

Period and Method of Exploitation.

(b) Distributor hereby agrees to release and exploit prints of said photoplays in the United States of America within (..) days after the delivery of the feature unit thereof to the Distributor.

(Alternative Provisions)

(1) Distributor agrees to exploit said photoplays through its franchise holders in the United States of America in accordance with the terms of its franchises, and in places where it has no franchise holders or at times when the terms of such franchise permit, to use its best efforts to exploit the said photoplays through rental of prints thereof generally to exhibitors.

(2) Distributor agrees to exploit the said photoplays in the United States by the rental of prints thereof to exhibitors at the highest practicable prices and the Distributor agrees not to exploit the said photoplays or any of them in connection with or in conjunction with any other photoplays and not to make it a condition of the rental of the said photoplays or any of them that its customer take or hire another or other photoplays in conjunction therewith.

Price of Prints for
United States.

(c) Distributor hereby agrees to advance the cost of positive prints supplied by it for exploitation in the United States of America at Dollars (\$. .) per reel, and the Producer hereby agrees that Distributor shall deduct and retain Dollars (\$) per reel for each reel of positive supplied by it hereunder for exploitation in the United States of America from amounts which shall accrue to the Producer under the terms of clause hereof.

Price of Prints for
Canada and Foreign
Countries.

(d) All positive prints which Distributor shall cause to be manufactured for its agents or correspondents in the Dominion of Canada or in foreign countries shall be paid for by such agents or correspondents at a price to be mutually agreed upon between Distributor and such agents or correspondents, but not exceeding Dollars (\$. . .) per reel, and the amount so paid to Distributor by its agents or correspondents in the Dominion of Canada or in foreign countries shall

not form any part of the receipts or royalties from the Canadian or foreign exploitation of such photoplays, and the Producer shall not participate in any amount so received by the Distributor.

Taxes.

(e) It is further mutually agreed that in the event that a new law be enacted imposing any tax upon the manufacture, sale or rental of motion pictures or motion picture film, whether raw or printed, and prohibiting the passing of such tax to the exhibitor, then and in that event the Producer agrees to pay to Distributor, in addition to the price of Dollars (\$. . .) per reel hereinabove provided for, a sum equivalent to the amount of any tax which the Distributor may be required to pay on any raw or printed positive film used in the manufacture of positive prints of the aforesaid photoplays or upon the manufacture, sale, or rental of such positive prints, it being mutually agreed that the passage or enactment of any law providing for such tax shall automatically increase the price of positive prints to be manufactured by Distributor hereunder by an amount equivalent to such tax and that the payment by the Producer of such increased price shall not be construed as payment of the tax by the Producer but as an increase in the purchase price of positive prints only.

Period and Method
of Exploitation.

6. The Distributors agree to exploit said photoplays elsewhere than in the United States, through its agents, correspondents, representatives or franchise holders by outright sale or on a royalty basis. The Distributor shall have the right at its option to discontinue the exploitation of any photoplays in the United States of America upon the expiration of two (2) years following its first release date. The Distributor is hereby granted the right to reissue any of said photoplays during any unexpired part of the term of the grant of

rights with respect thereto as in clause..... set forth:

Advance Against
Negatives.

7. (a) The Distributor agrees to advance or to procure to be advanced to the Producer and to pay or cause to be paid to the Producer within ten (10) days after the delivery of each feature unit, as hereinabove provided, the certified negative cost of such photoplay, calculated as hereinafter provided, and not in excess of the sum of..... for each photoplay. Such advances shall be paid in the following manner:

Advances for Ad-
vertising, etc.

(b) Distributor hereby agrees to advance to or on account of the Producer, a sum not to exceedDollars (\$....) for trade-paper, billboard, magazine, campaign books and/or other advertising of each of the photoplays.

Posters and Adver-
tising Accessories.

8. Distributor further agrees to cause lithographs, posters, slides, photographs and other appropriate advertising material to be supplied and issued in connection with each photoplay, without expense to the Producer, it being mutually agreed that the Producer shall not receive or participate in any sum of money collected by Distributor or its distributing agency as the proceeds of the sale or rental of such advertising material.

Cost of Production.

9. (a) The cost of production of each photoplay shall be not less than.....Dollars (\$.....) and not more than.....Dollars (\$.....) and in no event shall more than.....Dollars (\$.....) be advanced as the cost of production pursuant to the previous clause of this agreement, or reimbursed to Producer as hereinafter provided.

Statement of Pro-
duction Cost.

(b) The Producer agrees to deliver to Distributor concurrently with the delivery of the respective feature unit an itemized statement of the cost of production of such photoplay, verified as to accuracy by an executive officer of the Producer and by the bookkeeper in charge of the

Producer's accounts, and the Producer agrees that if such statement shall be unsatisfactory to Distributor, Distributor shall have the right to have the books and accounts of the Producer audited by a certified public accountant, and to that end the Producer hereby agrees to keep and maintain books, accounts, vouchers, receipts, etc., that will accurately show all items of expense charged against the cost of the respective productions and that such books, accounts and records shall at all reasonable times be open to inspection and audit by Distributor and its duly authorized representative.

Method of Calculating Cost.

(c) The Producer agrees that all items of cost charged against the respective feature unit shall be charged at the actual cost price to the Producer after the deduction of all discounts and/or rebates; that only such proportion of each item of expense as has been actually incurred in connection with the respective feature unit shall be charged against such feature unit; that the total of the expense incurred under the heading "Overhead" shall in no event exceed.....per cent. (...%) of the cost of the respective feature unit, exclusive of the expenditures under the heading "Overhead"; that all salaries paid to any persons directly or indirectly engaged in the production of any feature unit hereunder who may at the same time be engaged or employed in or in connection with the production of any other photoplay or in the performance of any other duties shall be prorated according to the time actually spent in such engagement or employment in connection with the respective feature unit.

Excluded Items.

(d) The cost of production shall not include royalties paid to authors based upon the earnings of any of said photoplays; individual advertising of any person appearing in any of said photoplays; advertising publicity, or exploitation expenses

incurred in connection with any of said photoplays; bonuses or commissions to either officers or employees of the Producing Company or artists appearing in any of said photoplays; or expenses of any kind or character incurred by the officers or any employees of the Producer, except those directly connected with or incident to the production of the respective photoplay.

(Additional provision)

[The following provision may be inserted in this clause, and the other clauses correlated therewith]:

Details of Items of
Negative Cost.

For the purpose of determining the cost of production of the negative of each of said photoplays, it is mutually agreed that the following items only of expense actually incurred in the production of each of said photoplays shall be included in the statement of cost of production:

Camera:

Salary of Cameraman
Salary of Assistant Cameraman
Rental of Extra Equipment

Cast:

Salary of—(leading actor)
Salaries of Leads
Salaries of Extras

Direction:

Salary of—(director)
Salary of Assistant Director and Staff

Electrical:

Salaries of Electricians and Assistants
Charges for Current
Rental of Extra Equipment

Laboratory:

Raw Stock at Cost
Inserts and Titles
Developing and Printing
Salaries of Cutters

Location:

Transportation—Automobile Hire, Hotels,
Meals, Railroad Fare

Location Rent

Properties:

Salaries of Property Men
Rental of Furniture and Props
Cost of materials

Rent:

Rent of Studio

Scenic:

Salary of Scenic Artist
Wages of Stage Carpenters, Wood Workers,
Stage Hands and Laborers
Materials for Sets and Scenes

Stills:

Salary of Cameraman
Materials

Story:

Cost of Story
Cost of Scenario or Continuity

Wardrobe:

Rental of Costumes.

Sundries:

Expenses incurred in the rental or purchase of materials, etc., not specifically mentioned above but necessarily used in the respective production, including trucking, expressage, special labor, and items of a similar nature.

Overhead:

Salaries of Executives
Salaries of Clerical Force
Stationery and Printing
Insurance
Executive Office Rent
Sundries not specifically mentioned above.

Compensation.

10. (a) It is mutually agreed that Distributor shall receive for its services in distributing and

exploiting each of such photoplays and for providing the exchange facilities for the handling and distribution thereof, and shall deduct from all amounts collected by it or by its distributing agency, a sum equivalent to.....per cent. (...%) of all gross amounts collected by it or by its distributing agency as the rental of positive prints of each of said photoplays in the United States of America and as royalties on, or as proceeds, of the sale, rental or other disposal of any right, license or privilege granted to any firm, corporation or individual to lease, license, exhibit, exploit or distribute said photoplays or any of them in any country outside of the United States of America, and a sum equivalent to the remainingper cent. (...%) of said gross collections shall accrue to the Producer but shall be retained by the Distributor as follows:

1st. To the repayment of the amounts advanced by Distributor or for Distributor's account for positive prints supplied hereunder for exploitation in the United States, for advertising and publicity and for insurance premiums.

2nd. To the repayment to the Producer of the actual cost of the production of the negative of the photoplays, which the parties have agreed shall not exceed the sum of..... dollars (\$.....) for each photoplay.

3rd. To the repayment of all sums, expended by Distributor or on Distributor's behalf, in procuring action upon the said photoplays, by the National Board of Review, and by any Board of Censors or other censoring body.

4th. To the repayment of any and all sums due or coming due to the Distributor upon other photoplays released pursuant to this agreement by reason of the Distributor's

advances for the making of positive prints, for advertising and exploitation, for repayment of negative costs, or agreed percentages thereof, and for repayment of censorship and review charges.

(b) After all the amounts provided to be repaid in subdivision (a) of this clause have been repaid, it is mutually agreed that the Distributor shall receive for its services, as in said subdivision set forth, a sum equivalent to.....per cent (...%) of all gross amounts described in said subdivision and a sum equivalent to..... per cent (...%) of said gross amounts shall accrue and be paid to the Producer. Distributor agrees to pay the balance to the Producer concurrently with the rendering of the statements provided for in clause.....hereof.

Distributor Grant-
ed First Lien.

11. The Producer hereby agrees that each feature unit deliverable to Distributor hereunder shall be free and clear of and from any claim, lien, mortgage, or other encumbrance of any kind or character whatsoever and that Distributor shall have and is hereby granted a first lien upon each such feature unit and each and every part thereof, as security for the advances to be made against the respective production; that such lien shall attach and come into being forthwith upon the delivery of the respective feature unit to the carrier for transportation to the Distributor, and shall continue as a first, prior and only lien or encumbrance upon the respective photoplay from such date until the expiration of the period for which the rights in the respective photoplay are hereby granted to the Distributor, and the Producer hereby agrees that the Distributor shall have the right to pledge any of the photoplays deliverable hereunder to third persons (including corporations), as security for any advances made by such persons, on account of such photoplay or photoplays

for negative or production cost, positive prints, advertising or otherwise, and that if and when such advances are made by such third persons, the lien hereby granted to Distributor shall be deemed to be granted to the persons making the advances as fully as if such third persons were a party to this agreement.

Copyright Guar-
anty.

12. Producer hereby covenants, warrants and guarantees that each photoplay delivered to Distributor hereunder shall be capable of copyright in the United States of America; that the Producer will not apply for copyright on said photoplays in the United States of America or in any other country in the world, and said Producer hereby grants and conveys unto Distributor the sole and exclusive rights to obtain copyright of said photoplays in its (Distributor's) name in the United States of America and in all other countries of the world where copyright or registration equivalent to copyright is procurable. Distributor hereby agrees to apply for copyright registration in the United States of America on each photoplay and to assign to the Producer any and all copyright acquired by it in said photoplay upon the expiration of the period of exploitation of the photoplay.

Main Title.

13. The main title of each photoplay and of all advertising material, where possible, shall state

(DISTRIBUTOR)

PRESENTS

(Title of Photoplay)

Distributed through.....

The Distributor agrees to give such other credit to authors, adapters, directors and others participating in the production of each photoplay as the Producer is required to give upon receiving due notice of such requirements from the Producer.

Records and Ac-
counts.

14. Distributor hereby agrees to maintain in the City of New York accurate accounts of all

of its transactions with respect to each of said photoplays showing amounts collected and receivable from the exploitation of said photoplays in the United States of America and in all other countries of the world, and Distributor agrees that the Producer shall have the right at its own expense to cause Distributor's accounts relating to the photoplays to be audited by certified public accountants at all reasonable times.

Reports.

15. Distributor hereby agrees that on the twentieth day of each and every month following the release date of each photoplay, it will deliver to the Producer a statement showing the total amount collected by it and its distributing agents during the preceding calendar month as the proceeds of the sale, rental or other disposal of the positive prints of said photoplay in the United States of America and in all other countries of the world, and each such statement shall show the deductions made from the gross amounts collected as hereinabove provided for, and any sum of money due and payable to the Producer at the date of any such statement shall be paid by Distributor to the Producer concurrently with the rendering of such statement.

Replacement
Prints.

16. Distributor agrees that so long as the negatives are in existence and subject to the wear and tear thereof, it will supply any new prints or parts of prints of the aforesaid photoplays in place of those worn or destroyed, for use in the United States of America, and will advance or procure the advance of the cost thereof at the rate of Dollars (\$) per reel in the case of entire reels and cents (. . . . c) per linear foot in the case of less than entire reels, and the said cost of replacing and supplying such prints shall be deducted from moneys accruing to the Producer under the terms of clause hereof.

Delay or Impossi-
bility of Perform-
ance.

17. If either of the parties shall be delayed or

prevented from performing any of the agreements which they have herein agreed to perform, by reason of any causes beyond the control of such party, such delay or failure of performance shall be excused and the period of such delay shall be treated as a nullity in calculating the term of this agreement or the time for the performance of any of the provisions thereof, and neither party shall have any demand, claim or cause of action for damages therefor or arising therefrom, and all such claims, demands or causes of action are hereby expressly waived by each of the parties hereto. The expression "causes beyond the control of such party" shall be construed to include fire, strikes, riots, the elements, acts of God or the public enemy, accidents to machinery or other equipment, or the injury or destruction of any of the negatives of the aforesaid motion picture photoplay by any of the aforesaid causes, delays or failure of performance by common carriers, but this definition does not and shall not be deemed or construed to limit in any way the generality of the expression "causes beyond the control of such party."

Parties not Partners

18. Nothing in this agreement contained shall be held to constitute the parties hereto as partners nor authorize either of said parties to contract any debt, liability or obligation for or against or on behalf of the other party to this agreement.

Non-Assignability.

19. This agreement is hereby declared to be personal in respect of each of the parties hereto, and each of said parties hereby agrees that it will not assign this agreement or any interest herein or right hereunder or pledge the same or any interest herein or right hereunder in any manner whatsoever without the consent in writing of the other party first had and obtained.

Notice.

20. Notice under this agreement shall be given by either party to the other, until further notice

in writing, by registered mail as follows: To Distributor at ; To Producer at

Interpretation of Agreement.

21. This agreement having been entered into in the City of New York shall be construed according to the laws of the State of New York.

Effect of Marginal Notes.

22. Marginal notes or captions contained in this agreement are no part of the agreement and are inserted merely for the convenience of the parties in referring thereto, and the parties agree that in the construction of this agreement, no inferences shall be drawn because of the presence or absence of such marginal notes or because of their wording.

This Document Contains whole Agreement.

23. This document sets forth the entire agreement between the parties and neither of the parties has made any covenants, agreements, conditions, warranties or representations with respect to the subject-matter of this agreement, except such as expressly appear in this document.

Cancellation.

24. If the Distributor shall abandon this agreement, then and in that event the Producer may, at the Producer's option, cancel this agreement. Such cancellation may be either a total cancellation or a partial cancellation, as stated in the notice of cancellation by the Producer. The effect of a total cancellation shall be to accelerate the expiration of this agreement to the date of such cancellation, and the Distributor shall forthwith return to the Producer all prints of all photoplays theretofore delivered by the Producer to the Distributor, and shall account to the Producer for all moneys unaccounted for at the date of cancellation and for all moneys received by the Distributor after date of the cancellation. In the event of such total cancellation the Distributor agrees to deliver to the Producer all booking records of each of the photoplays delivered hereunder, with respect to bookings to be effective after the effective date of the cancellation, and to transfer

to the Producer the Distributor's interest in any and all such contracts. The effect of a partial cancellation shall be to terminate the obligation of the Producer to deliver further photoplays or prints thereof to the Distributor, but with respect to all photoplays and prints thereof delivered before the cancellation, this contract shall continue in full force and effect.

Abandonment

25. The following circumstances are hereby declared to be and shall be deemed to be conclusive evidence of the abandonment of this contract by the Distributor:—

1. Failure by the Distributor to make any of the payments required to be made by Clause of this agreement, within ten (10) days after written demand for such payment.

2. Violation by the Distributor of Clause of this agreement (referring to the Clauses, if any, restricting exhibition, etc., outside of the agreed territory).

3. Adjudication of the Distributor as a bankrupt or the filing of a voluntary petition in bankruptcy, or the making of a general assignment by the Distributor.

4. The appointment of a Receiver for the Distributor, and the continuance of such Receiver in control of the Distributor's property for five (5) days after such appointment.

5. The breach by the Distributor of any of the terms, conditions and provisions of this agreement on the Distributor's part to be kept and performed, and the continuance of such breach for ten (10) days after notice thereof.

6. Any occurrence or series of occurrences which puts it out of the Distributor's power fully and fairly to perform this agreement.

26. The failure or neglect of either party to exercise any rights accruing to such party upon the breach of this agreement by the other party hereto shall not be or be construed to be a waiver of the right to exercise such rights upon the occurrence of a subsequent breach of this agreement.

Sale of Foreign Rights of Film

AGREEMENT made.....between.....hereinafter designated as the "Producer," and.....hereinafter designated as the "Distributor":

WITNESSETH:

WHEREAS, the parties desire to contract for a period ofmonths, commencing on.....wherein and whereby the Producer shall grant the exclusive right and license to distribute prints of productions of motion pictures made by them to the Distributor in the territory hereinafter mentioned;

WHEREAS, the Distributor desires to obtain the exclusive right and license to distribute such prints throughout....., hereinafter referred to as the territory, for the period, and in the manner, and upon the terms hereinafter set forth,

NOW, THEREFORE, in consideration of the premises and of the mutual promises and covenants herein contained, the parties agree as follows:

1. The following words and phrases used in this agreement shall, unless the same be inconsistent with the context, be construed as follows:

(a) Distribute and Distributing shall include all methods and means of procuring contracts with exhibitors for the use of the Producer's prints; Exchange shall include branches, agencies and all other establishments engaged in the business of distributing, whether the same be operated directly or indirectly by the Distributor, and whether owned or controlled by the Distributor, or operated by or through contractual relationship, with it; Exhibitor shall include individuals, firms, associations and corporations engaged, generally or occasionally,

in the business of displaying motion pictures to the public; Territory shall be construed as meaning the.....

(b) Any notice hereinafter required to be given shall be considered as actually given on the date on which the same is mailed by registered mail, addressed to the party for whom it is intended, at its last known post office address in....., and carrying on its envelope or wrapper substantially the following: "Return Receipt Required."

(c) Prints shall mean positive or copies made from the negatives of a motion picture; Productions shall include motion picture photoplays and motion pictures, not photoplays; Release shall mean the first delivery of prints pursuant to the provisions of this agreement, and (as to the Distributor) the first exhibition of such prints by an exhibitor; Release date shall mean the date of the first public exhibition of a production in the territory other than a Sunday; Person, includes a corporation, association and partnership; the words importing the plural number may apply to and mean only a single person or thing vice versa; Delivery date, shall mean the date of shipment of prints from the factory or office of the Producer in.....

2. The Producer agrees to furnish and deliver to the Distributor, and the Distributor agrees to take, during the term of the contract for use only in the territory for a period ofyears from the date of delivery,.....complete prints ready for exhibition, of.....productions per week during each and every week of the term hereof; said productions shall consist of a connected series of scenes presenting a complete story, based upon a well-known drama or novel, of entertaining character, or upon an original scenario and each of the prints thereof is to be from four to six thousand feet in length; and said productions shall be of the same general nature as those now shown in the.....on what is known as the Program.

3. The Producer shall deliver all prints F. O. B. New York and make shipments in accordance with the directions given by the Distributor or its agent, it being strictly understood and agreed that the Distributor is to pay all expressage, postage, insurance, duty and other shipping charges. The Producer

agrees that in the event that the duty on films imported into the territory or any part thereof is raised above the present rates, the Producer will reimburse the Distributor to the extent of% of any such excess, and the Distributor shall be permitted to retain the same out of the% of the gross receipts to be turned over to the Producer as hereinafter provided.

4. Neither party hereto shall be liable for any delays caused by act of God or war.

5. If either of the parties shall be delayed or prevented from performing any of the agreements which they have herein agreed to perform, by reason of any cause beyond the control of such party, such delay or failure of performance shall be excused and the period of such delay shall be treated as a nullity in calculating the term of this agreement or the time for the performance of any of the provisions thereof, and neither party shall have any demand, claim or cause of action for damages therefor or arising therefrom, and all such claims, demands or causes of action are hereby expressly waived by each of the parties hereto. The expression "causes beyond the control of such party" shall be construed to include fire, strikes, riots, the elements, acts of God or the public enemy, accidents to machinery or other equipment, or the injury or destruction of any of the negatives of the aforesaid motion picture photograph by any of the aforesaid causes, delays or failure of performance by common carriers, but this definition does not and shall not be deemed or construed to limit in any way the generality of the expression "causes beyond the control of such party."

6. The Distributor shall accept deliveries of the Producer as hereinbefore provided in the City of New York, and shall distribute the prints in the following manner: the Distributor shall provide through ownership or contract relation, throughout the term hereof, and the territory hereinbefore described, exchanges of sufficient number, and properly equipped, to conduct the business of handling the Producer's production, and the Distributor agrees to give to its undertaking the best efforts of its officers, agents and employees, its exchanges, their officers, agents and employees, to the end that the gross returns

shall be as large as possible, consistent with good business and the usages and customers of the Distributor. The Distributor shall carefully supervise each exchange and shall provide for the placing of the Producer's prints in the hands of exhibitors throughout the territory described. The contracts between exhibitors and exchanges and between the exhibitors and the Distributor shall be limited in respect to payments for the use of prints to (a) a flat rental basis; (b) a rental based upon a percentage of the gross receipts and shall always be subject to the approval of the Producer.

7. The Distributor shall pay to the Producer for the use of the prints of said production a sum equal to (. . . . %) per cent of the gross amounts paid by exhibitors as rental for each print and of the gross receipts of exchanges, subleases and licenses of the Distributor from all other sources, for the booking and exhibition of the prints of the said subject. The Distributor shall pay to the Producer on the delivery of the three or four prints of each subject as aforesaid as herein provided, dollars, as an advance on account of the payments to be made to the Producer for such production pursuant to the provisions of this paragraph; that thereafter the % of the gross amounts and receipts above mentioned, from said productions, shall be retained by the Distributor until the amount of each advance thereon, dollars shall have been liquidated, it being strictly understood and agreed that the receipts from any one production shall not be retained by the Distributor to apply on the advances made on any other production.

The Producer shall furnish to the Distributor without additional advance by the Distributor, additional copies (not to exceed) of any production when the Distributor deems it necessary for the best purposes of obtaining the maximum amount of rental out of a subject. The Producer agrees to furnish to the Distributor additional copies above for an advance of dollars per copy, subject to reimbursement as last above provided.

8. The Distributor agrees and guarantees that the payments made to the Producer on account of the % as aforesaid on subjects which are delivered to the Distributor between

the.....day of.....19.., and the.....day of, 19.., will aggregate such an amount as will be an average of.....dollars per production, on or before theday of....., 19...

The Distributor agrees and guarantees, &c. (similar paragraphs).

And, in the event that such payments do not aggregate said sums within the time prescribed, the Distributor covenants and agrees to pay to the Producer at such time, the difference between the sums thereon paid on account of the said.....%, and the amount of the said guaranty. Whenever the Distributor is required to make good any deficiency on any group of productions as above described, it shall be entitled to retain the.....% of the gross amounts and receipts from said group until the amount of such deficiency paid by it shall have been offset.

9. The Distributor agrees to furnish to the Producer a weekly statement which shall show, in detail, the business transacted during such week, and shall include an itemized statement of the bookings and gross income during such week for each production; such weekly statements shall be mailed to the Producer promptly and in no event shall the mailing of any statement for any week be delayed beyond the period of one week. At the time of delivery of each statement, the Distributor shall pay the amount thereon shown to be due to the Producer in.....funds; all statements shall be full, true and correct and shall show each and every booking and exhibition of prints during said week and each sale of franchise or territorial rights or income from other sources during such period.

The Producer, or its duly accredited representative, shall have free access at all reasonable times to the books, records, papers and vouchers of the Distributor, and its exchanges, pertaining to the bookings, rentals, franchises and income herein mentioned, and the Producer shall have the right to employ an accountant or accountants who, at all reasonable times, shall have access to all said books, at any of the offices, as well as the exchanges of the Distributor. The Distributor shall keep complete books and records of all business dealings relative to the films distributed by it under this contract.

10. The Distributor shall not permit any of the Producer's prints to be copied or duplicated or shown without the territory hereinbefore described and shall immediately notify the Producer of any infringement upon the productions herein mentioned, which comes to its knowledge.

The Producer will not exhibit said productions in said territory, nor will it cause the same to be exhibited therein, and the Producer will not lease, supply or lease prints of any of said productions to any other person for use in said territory during the term of this agreement, nor let, lease, market, dispose of, exhibit or permit others than the Distributor and its licensees to exhibit (so far as the Producer may control such exhibition by others) any of its productions whatever, except productions, the rights to lease or exhibit which were granted prior to the date of this agreement.

11. The Producer hereby gives and grants to the Distributor the right to enjoin any showing of any of the productions leased to the Distributor under this contract by any party not authorized so to exhibit them in the territory hereinbefore mentioned, or sue for damages therefor, but any such action shall be taken at the expense of the Distributor, and the Producer shall be in no way liable for the acts of the Distributor in relation thereto.

It is understood and agreed that the legal title to the said films shall remain in the Producer, and that this agreement is merely a license to use the films for years from the date of delivery of the first print of each production, and that the Distributor will copyright or otherwise protect the title to the said films, in the names of the Producer, in the various countries included in the territory aforesaid.

12. Every print delivered to the Distributor under this agreement is to be returned to the Producer at the Producer's option after years from the date of delivery of the first print of the production to which it relates, provided it has not been destroyed, stolen or rendered useless by unavoidable accident, in which case the Distributor if requested by the Producer shall supply proof covering the cause of its destruction or loss.

13. The Producer shall supply to the Distributor first class

lithographs of each production printed in the English language, at per sheet, in such quantities as may be required by the Distributor, provided the Producer has the same in stock, delivery to be made in and payments thereof to be made upon presentation of shipping documents.

14. In the event that the Distributor at any time makes default, (a) in paying the Producer the advances or any of them, mentioned in paragraph "8" provided to be paid; (b) for thirty days, in paying to the Producer the guarantee, or any of them, hereinbefore provided; (c) in paying the percentages, or any of them, as hereinbefore provided; (d) in furnishing the Producer full, true and correct statements, as hereinbefore provided; (e) in accepting delivery and paying for prints, as hereinbefore provided; (f) in keeping books of account, as hereinbefore provided; (g) in giving the Producer free access to the books, as hereinbefore provided; (h) in exhibiting the productions of the Producer, or either of them, outside of the territory hereinbefore described; (i) in assigning its interest in this agreement by either voluntary or involuntary act; or should the Distributor file a petition in bankruptcy or be adjudicated a bankrupt, then, on the happening of any one or all of said defaults or events, the Producer may at its option terminate this agreement by giving ten days' notice to the Distributor declaring its intention so to do, and may then seize and take wherever found, any and all prints theretobefore furnished by the Producer to the Distributor, and the Producer may also enjoin in any Court or Courts having jurisdiction, the use of any or all prints furnished by the Producer to the Distributor under the agreement.

The rights and remedies hereinbefore last given to the Producer are in addition to and not in lieu, in limitation or in derogation of the rights and remedies in this agreement otherwise granted or by law created and vested in the Producer, and any waiver by the Producer of any breach by the Distributor, whether such waiver be direct or implied, shall not be construed to be a continuing waiver or a waiver of, or consent to any subsequent breach on the part of the Distributor.

15. This contract being signed and entered into in, it is agreed that the law to be applied to any matters arising

hereunder shall be that of the State of and of the United States of America.

16. In the event that the Distributor is prevented from showing or exhibiting the prints or any production delivered to it, by a Court of competent jurisdiction, or by the Board of Censors, it shall have the right to immediately return the prints of said production and choose another production made by the Producer in place of the one so returned, provided that the Producer has an available substitute production; or it shall have the right to return the said prints of said subjects and the advance payment made thereon shall be returned to it, but any such return shall be made within twelve weeks from the date thereof.

17. The Distributor shall, at its own expense and cost, take care of all advertising that may be needful or proper for the exploitation and distribution of the product of the Producer and in all advertising it shall subordinate its own name to the production and/or productions advertised, and in every advertisement of a production and or/productions, the name of the Producer thereof (.Company or theCompany or both, as the case may be) shall appear in reasonably conspicuous type and position. In general, advertising space used by the distributor in any newspaper, periodical, circular or other advertising medium shall be divided so that four-sevenths thereof will be devoted to the product of theCompany and three-sevenths to the product of theCompany. The intent and purpose of this provision is found in the agreement between the parties that the best results will be attained by the Distributor's concentrating upon advertising the productions of the Producer.

Nothing in this paragraph contained, however, shall apply to lithographs, it being understood and agreed that the lithographs to be used by the Distributor shall be the lithographs supplied by the Producer under clause "13" of this agreement, unless the Producer shall be unable to supply the same as in said clause contemplated, in which event the lithographs or printed bills used in place thereof shall bear the name of the production, the star, the Producer and the Distributor in such manner that the Distributor's name shall be subordin-

ated to both the name of the production and the name of the Producer thereof.

The Distributor agrees that it will, at no time advertise in a manner to create the impression that the Distributor is the Producer of or "presents" any of the productions of the Producer.

18. All payments to be made hereunder by the Distributor to the Producers shall be made in respect to the productions of each at the office of each in the City of, promptly in funds.

19. It is agreed that the Distributor is not the representative of the Producer in any manner whatever, and the Distributor agrees that it will not so hold out, either by advertising or otherwise, to the public or to any person whomsoever, and that the Producer shall not be liable for or bound by any representation, act or omission whatever of the Distributor.

It is further agreed that this agreement in no wise constitutes a partnership between the parties hereto; this agreement is declared to be personal in respect to each of the parties and it is agreed that neither shall assign the same, without the written consent of the others.

Purchase from Author of Motion Picture Rights of an Original Unpublished Work

KNOW ALL MEN BY THESE PRESENTS, that I,
 of, in the State of
 for and in consideration of \$., the
 receipt of which sum is hereby acknowledged, have granted,
 sold, assigned and transferred, and by these presents, do grant,
 sell, assign, and transfer unto said,
 all right to take, make, manufacture, produce, sell, lease,
 release, license, generally deal with and traffic in, exhibit,
 exploit, and cause to be exhibited and exploited, motion
 pictures and photoplays based upon or taken from or adapted
 from a certain manuscript entitled, which
 said manuscript has heretofore been delivered to said

I hereby agree that I will not at any time in the future, sell, grant, transfer and convey unto any other person, firm or

corporation, any rights or licenses which will in any wise conflict with the full, free and untrammelled enjoyment of the rights hereby granted, sold, and transferred to, and I further agree that if the said manuscript or any work based thereon should ever be published, I will cause such work to be copyrighted and will grant or cause to be granted to a license under such copyright coincident with the terms of this agreement.

And I further grant, sell, assign and transfer to said, its successors and assigns, the right to obtain copyright in all countries upon any photoplays and motion pictures based upon or adapted from the said manuscript, and the absolute and unqualified right to use the said manuscript in whole or in part, and adaptations from the whole or parts thereof, in the production of motion pictures and photoplays.

In order to induce said to make the payment above referred to, I hereby warrant and represent to said :

1. That I am the sole and exclusive owner of the aforesaid manuscript and of all rights of any and every kind and nature therein and thereto throughout the world, and that the said rights and each and all of them, are free and clear of any lien, charge, debt or encumbrance of any kind or character.

2. That the said manuscript is an original composition and that I am the sole author thereof, and that neither the whole thereof, nor any part thereof, nor any incident thereof, is taken from any other manuscript or composition, or from any other published or unpublished work.

3. That neither the said manuscript nor the subject matter thereof, nor any part thereof, nor any incident thereof, has ever been published or dedicated to the public in any manner whatsoever.

4. That the title of the aforesaid manuscript is such as may be freely used by the said, its successors and assigns, in connection with the said composition and in connection with any adaptations thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this day of, 19 . . .

. [L. s.]

Purchase of Motion Picture Rights to a Published Magazine Story

KNOW ALL MEN BY THESE PRESENTS, that I.....
of....., in the State of....., for and
in consideration of \$....., paid to me by.....
....., the receipt whereof is hereby acknowledged, do
hereby grant, sell, assign and transfer unto said.....
....., all right to take, make, manufacture, produce,
reproduce, sell, lease, release, license, generally deal with
and traffic in, exhibit, exploit and cause to be exhibited and
exploited, motion pictures and photoplays based upon or taken
from or adapted from a certain story entitled.....
and published in.....Magazine, in the issue of
....., copyright whereof was registered by.....
.....on or about the.....day of....., 19...

I hereby agree that I will not at any time in the future,
sell, grant, transfer and convey unto any other person, firm or
corporation, any rights or licenses which will in any wise
conflict with the full, free and untrammelled enjoyment of the
rights hereby granted, sold and transferred to.....

In order to induce.....to make the payment to
me above mentioned, I hereby warrant and represent:

1. That I am the sole author of the said story, that the same
is not an adaptation of or plagiarism from any work published
or unpublished, or any part of any such work, and that I am
the sole and exclusive owner of the rights hereby granted, sold,
transferred, and assigned, and to the whole thereof, free and
clear of any lien, encumbrance, debt or charge of any kind or
character whatsoever.

2. That the copyright of said story, except for the first Amer-
ican serial rights, has been transferred to me by said
....., by assignment....., recorded in the
Copyright Office in Washington on.....
(*or in the alternative delivered together with the delivery of this
instrument to.....for purposes of
record in the Copyright Office.*)

3. That the title of the aforesaid composition is such as

may be used by.....in connection with motion pictures and/or photoplays based upon or adapted from said story.

In amplification of, and not in limitation of any rights hereinbefore specified as sold, assigned, transferred and granted unto said....., I hereby specifically assign, grant, sell and transfer unto....., the right to adapt, arrange, rearrange, change, transpose, add to and subtract from the said story as and to the extent that the said.....may deem expedient in the production of motion pictures and photoplays, and to the publication by said....., its successors and assigns, of a synopsis of said motion pictures and/or photoplays when completed, for descriptive purposes and advertising and giving publicity to and exploiting the said motion pictures and/or photoplays.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this.....day of....., 19...

.....[L. S.]

Purchase from the Author of All Rights to an Original Unpublished Work

KNOW ALL MEN BY THESE PRESENTS, that I,
....., of....., in the State of.....
for and in consideration of \$....., the receipt of which sum is hereby acknowledged, have granted, sold, assigned and transferred, and by these presents do grant, sell, assign and transfer unto said....., a certain manuscript entitled....., which said manuscript has heretofore been delivered to said.....
.....

AND I hereby grant, sell, assign and transfer unto said....., all rights of any kind and character appertaining to said manuscript, and the complete and unconditional and unencumbered title therein and thereto.

AND I further sell, grant, assign and transfer to said.....
....., its successors and assigns, the right to obtain copyright in all countries upon the said manuscript and upon any literary, photographic or dramatic transcriptions or

adaptations thereof, and the absolute and unqualified right to use the said manuscript in whole or in part, and to use adaptations thereof in whatever manner the said..... shall desire.

In order to induce said..... to make the payment above referred to, I hereby warrant and represent to said.....:

1. That I am the sole and exclusive owner of the aforesaid manuscript and of all rights of any and every kind and nature therein and thereto throughout the world, and that the said rights and each and all of them are free and clear of any lien, charge, debt or encumbrance of any kind or character.

2. That the said manuscript is an original composition and that I am the sole author thereof, and that neither the whole thereof, nor any part thereof, nor any incident thereof, is taken from any other manuscript or composition, or from any other published or unpublished work.

3. That neither the said manuscript nor the subject matter thereof, nor any part thereof, nor any incident thereof, has ever been published or dedicated to the public in any manner whatsoever.

4. That the title of the aforesaid manuscript is such as may be freely used by the said....., its successors and assigns, in connection with the said composition and in connection with any adaptations thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this.....day of....., 19....

.....[L. s.]

PARTNERSHIP AGREEMENTS

Partnership Contract, General Form, With Provision for Continuation of Firm after Withdrawal of One Partner and Option to One Continuing Partner to Retire upon Notice and Become Special Partner.

Williston, Sections 229, 330, 345, 346, 388, 475, 489, 512, 521, 731, 783, 1147, 1212, 1240, 1258, 1431, 1442, 1446, 1637, 1644, 1773, 1774, 1805, 1868, 1875, 1902, 2038;
Housman *v.* Waterhouse, 191 App. Div. 850, 182 N. Y. Supp. 249.

AGREEMENT made.....between.....
hereinafter described as the "First Partner,".....herein-
after described as the "Second Partner," and.....,
hereinafter described as the "Third Partner" as follows:

WHEREAS the parties hereto, together with one.....
were heretofore partners under the firm name and style of
..... and.....

WHEREAS the said partnership was dissolved by consent
.....by the withdrawal from said firm of the said
.....and his interest in the said firm having been
transferred by him to the parties hereto, and it being the
desire of said parties to organize a new partnership under the
terms and conditions hereinafter set forth.

1. The parties hereby agree to become partners in the busi-
ness of.....

2. *Name.* The business of the said partnership shall be
conducted under the firm name and style of.....

3. *Term.* The said partnership shall commence.....
and shall continue until.....

4. *Place of Business.* The business of the said partnership
shall be conducted at such place or places in the.....
as shall be agreed by the parties.

5. *Capital Contributions.* Each of the parties hereby con-
tributes to the capital of the partnership the amount of his

share or interest in the business appearing upon the books of the former firm of, and which said respective amounts are as follows: The First Partner, Dollars; the Second Partner, Dollars; and the Third Partner, Dollars.

6. *Withdrawal of Capital.* It is agreed that in no event shall any one of the parties withdraw from the firm any amount which will reduce his capital account below \$. Any of the parties whose capital account is in excess of \$., may withdraw such excess amount at any time after having given days' written notice of his intention to do so.

7. *Interest on Capital.* Interest shall be credited to the capital account of each of the partners at the rate of per cent per annum, and such interest shall be charged to the expense account of the firm.

8. *Salaries.* Each of the parties hereto shall be entitled to and shall receive a salary at the rate of \$ per annum, which shall be charged to the expense account of the partnership, and none of the partners shall draw any sum in excess of the said \$. without the consent of all of the parties.

9. *Duties of Partners.* Each of the parties agrees to devote his entire time, skill and energy to the best interests of the business of the partnership during the continuance thereof, and unless all consent in writing, none of them will, during the existence of the said partnership, become directly or indirectly in any manner interested in any business, occupation or pursuit whatsoever other than the business of the said partnership; and unless all consent, none of them will, during the continuance of the said partnership, become liable in any way whatsoever by reason of any matter or thing not connected with the said co-partnership, either as endorser, surety or otherwise, and unless all consent, none of them will speculate in stocks, securities or other commodities of any kind or nature whatsoever, upon margin, in his own name or otherwise, or become interested with others in such speculations in any form or manner whatsoever.

10. *Profits and Losses.* The profits arising out of the conduct

of the business shall be divided between the parties equally, share and share alike, and the losses shall be borne in the same proportion.

11. *Accounts and Books.* Full, just, true and accurate accounts shall be kept of all matters relating to the business to be conducted by the partnership, and the books containing such accounts shall at all times be open to the inspection of all the parties hereto.

12. *Inventory.* On....., and thein each year during the continuance of the partnership, there shall be taken a full and complete inventory of the business and the parties shall render each to the other a just and true account of all matters and things relating to the said business at the time of taking of such inventory, whereupon the profits and losses, as the case may be, shall be ascertained and equally divided, If profits have been made each partner shall be credited with his share thereof; and if losses have been sustained each partner shall be charged with his share thereof.

13. *Option of one Partner to Retire.* The Third Partner shall have the right and option, on.....of retiring from the partnership, provided he shall have given the other partners written notice not later than....., of his intention so to do. In the event of the Third Partner so retiring, an inventory shall be taken on....., of all of the assets of the firm in the same manner usually employed by the firm except that all good outstanding accounts shall be valued at per cent of their gross amount, and the value of all doubtful accounts shall be adjusted by agreement. In such event, the Third Partner shall receive, on or before....., from the partnership, one-half of his interest, to be determined as aforesaid, in cash or duly certified check, and there shall then be immediately organized a copartnership under the name of.....in which the First and Second Partners shall be general partners, and to which they shall contribute all of their interest appearing as of..... in said business, and to which the Third Partner shall contribute his remaining one-half interest, to be determined as aforesaid, as a special partner, such partnership to be for a period of....., and to contain the usual provisions with

reference to special partnerships, and in which the salaries of the parties of the first and second part shall be limited to \$. each per annum, and the Third Partner shall not receive any salary, but shall receive interest on the amount of his special capital at the rate of per cent per annum, payable quarterly in advance, which special partnership agreement shall also contain a provision that the general partners shall, during its continuance, not withdraw from the firm any sum in excess of their salary.

14. *Liquidation in Event of Death.* In the event of the death of any one of the parties hereto during the continuance of this agreement, provided that the foregoing provision for a special partnership has not been entered into, then and in such event, the interest of the partner so dying shall be determined, if such death occurs within three months of the taking of the preceding inventory, as of the date of such preceding inventory and as it then appeared, and in the event of the death occurring within three months of the next succeeding inventory to be taken as above provided, then the interest of such deceased partner shall be determined from such inventory, which shall be taken in the same manner as the inventories were customarily taken by the firm, except that all good outstanding accounts shall be valued at per cent of their gross amount, and that an adjustment shall be made by an agreement as to the value of doubtful accounts.

15. In the event of the death of one of the partners within three months of the taking of the next preceding inventory, his interest determined as aforesaid from said inventory, shall be paid to his duly authorized legal representatives within thirty (30) days after his death as follows: One-third in cash or by duly certified check, one-third by the surviving partners giving their promissory note for one-third of the amount of such interest, payable six month from said date, to the order of the decedent's duly authorized legal representative, and bearing interest at the rate of five per cent per annum, and the remaining one-third by giving a further promissory note for one-third of his interest payable twelve months from said date, to the order of the decedent's duly authorized legal rep-

representative signed by the surviving partners, and bearing interest at the rate of five per cent per annum.

16. In the event of the death of any one of the partners within three months prior to the date of taking the next succeeding inventory as herein provided, then in such event, the interest of such deceased partner, to be determined by the next succeeding inventory, shall be paid to his duly authorized legal representative thirty days after the date of the taking of such inventory, and such payment shall be made one-third in cash or by duly certified check, and the remaining two-thirds by executing and delivering to his duly authorized legal representatives, two certain promissory notes, payable at the same periods and at the same rate of interest as immediately hereinabove provided in the case of the death of the partner within three months subsequent to the next preceding inventory.

17. In the event of the death of any partner, his salary shall cease from the date of his death, but his representatives shall be entitled to withdraw an amount equal to his salary from the firm until the settlement with such representatives as above provided, but this amount so drawn, from the date of his death until the date of the settlement, shall be charged against the share or portion in the business of such deceased partner.

18. In the event of the Third Partner exercising his option, and the special partnership hereinbefore provided being organized, and either of the general partners dying during the period of such special partnership, then the surviving partner shall have the option either of continuing the business to the end of said special partnership and then, as speedily as can reasonably be done, liquidating the firm, or, the surviving general partner may immediately, upon the death of the other general partner, proceed to liquidate the business.

19. In the event of the present co-partnership continuing until, and any two of the parties hereto expressing their intention to continue in the same line of business, in writing, to the other partner at least five months prior to, then the said two partners shall

have the right and privilege during said period of five months to devote such of their time and attention as may be reasonably required by them for making purchases, sales and contracts for the new firm to be organized by them subsequent to ; and in such event inventories shall be taken on , in the customary manner except the good outstanding accounts shall be valued at per cent of their gross amount, and doubtful outstanding accounts shall be valued by adjustment between the parties and the interest of the partner retiring from the business shall be paid to him, one-half in cash not later than , and the remaining one-half by the partners continuing the business giving their joint promissory note to the partner so retiring for the remaining one-half of his interest, payable thereafter, bearing interest at the rate of . . . per cent. In determining the interest of the retiring partner, there shall be charged against the interest of the partners remaining a reasonable amount for expenses which may be incurred in making purchases and sales for the account of the new partnership to be organized on or after

20. In the event of the dissolution of this co-partnership by the exercise of the option hereinbefore given to the Third Partner on , the new special partnership may be continued under the same name as this general partnership, but upon the termination of the period of said special partnership, the said firm name shall not thereafter be used, and generally, it is agreed that in the event of the retirement of any member of this co-partnership, or upon the death of any member of this co-partnership, the said firm name shall not be continued by the remaining members or by the surviving members, as the case may be. In arriving at the value of the interest of any retiring or deceased partner, as hereinbefore provided, there shall be no charge against the remaining partner or partners for the good will of the business.

**Partnership Agreement—Continuation of Firm in Event of
Death of One Partner—Control by One Partner—Rights of
Legal Representatives of Deceased Partner**

PARTNERSHIP AGREEMENT made thisday of.....
....., between.....,
....., all of the City of New York.

In consideration of the agreements herein contained, the parties agree with each other as follows:

1. Said parties shall be partners, for the period and on the terms herein stated, in a general partnership which is hereby formed under the firm name and style of ".....," for the purpose of carrying on a general..... business, and of transacting such other business as the parties hereto may from time to time determine and agree upon, with its principal office in the City of.....

2. Said partnership shall continue for a term commencing on the....day of....., and ending on the....day of.....; provided, however, that in the event of the death of any partner during said term, the business of the partnership shall nevertheless be continued until one year from the date of his death, even though said year shall expire after said....day of....., unless the surviving partners choose to liquidate the business prior to the expiration of such year. During such year, or such portion thereof as the partnership business may be continued as aforesaid, the capital and interest in the partnership assets of each of the partners shall remain in the business, the business shall be conducted by the remaining partners or the survivor of them, and the representatives of a deceased partner shall be entitled to the same proportion of profits that the deceased partner, if living, would have received.

3. The capital with which said partnership will commence business is \$.....of which \$..... is contributed by....., \$..... is contributed by....., and \$..... is contributed by.....

4. Of the net profits of said business,.....shall

receive.....per cent,shall receive.....
 per cent, and.....shall receive.....per cent,
 and all divisions of profits shall be in the above proportions.
 The decision or direction of.....shall be con-
 trolling with respect to the financial business and affairs of the
 partnership, and he shall determine the amount of profit to be
 divided from time to time during the partnership term, and
 the partners shall share in the profits during said term only as
 divided in accordance with his determination; provided,
 however, that in the event of his death, divisions or distribu-
 tions of profits may be made with the consent of both of the
 remaining partners, or by the survivor of them. All the losses
 of said business shall be borne by the partners respectively in
 the proportions above provided for the division of profits.

5. Books of account shall be kept showing all the trans-
 actions of the partnership, which books shall be accessible to
 any of the partners, and each partner agrees that all transac-
 tions made by him for said partnership shall be entered in
 such books.

6. Upon termination of the partnership at the expiration of
 the period of the partnership agreement, or by the death of
 any partner as aforesaid, an account shall be taken and rendered
 of the affairs and business thereof and division of its assets
 shall be made in the proportions above provided for the
 division of profits. In taking such account, however, the
 goodwill and firm name shall not be valued as a partnership
 asset, but shall belong to the continuing or surviving partner or
 partners. The representatives of a deceased partner shall
 accept as true the account furnished by the surviving partner
 or partners without any examination by or on behalf of such
 representatives; and it is hereby agreed that the determination
 by the surviving partner or partners of the amount to which
 the estate of a deceased partner shall be entitled shall be final
 and conclusive.

IN WITNESS WHEREOF, said parties have hereunto set their
 hands and seals (in triplicate) the day and year first above
 written.

Partnership Agreement—Expiration on One Year's Notice of Cancellation—Contributions to Capital Treated as Loans—Division of Profits—Drawing Accounts—Death of Partner—Capital to Remain in Firm—Payments to Estate of Deceased Partner—Use of Firm Name on Dissolution

PARTNERSHIP AGREEMENT, made this.....day..... of....., 1916, between.....,,, all of the City of....., and....., of.....

1. The said parties hereby form a general partnership and agree to be general partners together therein in the business of, and all incidental business, under the firm name of....., said partnership to have its principal office in the City of, with a branch office in....., and further offices at such other places as the partners may from time to time agree upon.

2. The said partnership shall commence on the.....day of, and continue until terminated by mutual agreement or by notice in writing served by any partner on the others terminating the partnership at a time to be stated in such notice, which shall not be less than one year after the service of such notice.

3. By mutual assent, contributions to capital may be made from time to time by any of the partners or any of such contributions may be withdrawn. Such contributions may be made in cash or in stock or securities, provided that if made in stocks and securities they shall be acceptable to all the partners. Such contribution shall, as between the partners and for all purposes of profits or settlement of partnership affairs, be treated as loans by the partners respectively, and each partner shall be entitled to receive interest at the rate of..... per cent per annum upon the amount of his cash contributions, and to receive the dividends and interest paid on any stocks or securities contributed in lieu of cash, before any profit shall be estimated or divided.

4. Of the net profits of such business, said.....

shall receive.....per cent, said.....,
 per cent, said.....,per cent, and said
,per cent, division and distribution
 to be made from time to time as may be agreed upon, and all
 losses of said business shall be borne by said partners respec-
 tively in the same proportion.

5. Said.....shall be entitled to draw on account
 of his share of the profits up to the amount of \$.....in
 each year; said.....shall be entitled to draw on
 account of his share of the profits up to the amount of \$.....
 in each year; and said.....shall be entitled to
 draw on account of his share of the profits up to the amount of
 \$.....in each year; and if at the end of any fiscal
 year the share of said....., or of said....., or of
 said.....in the profits of that year shall not equal the
 amount of his drawings for that year, nevertheless he shall be
 entitled to retain the amount of such drawings, the excess
 thereof over his share of the profits for that year to be charged
 to him against his share of the profits for succeeding years,
 but it is understood and agreed that, at the termination of
 this partnership in any manner, any amounts then remaining
 so charged to said....., said....., or said.....
 shall be cancelled and shall be personally assumed by said

6. Full and true accounts shall be kept showing all the
 transactions of the partnership, which accounts shall be
 accessible to all the partners, and each partner agrees that all
 transactions made by him for such partnership shall be entered
 in said books. No partner shall sign the firm name or other-
 wise contract for the firm, except in and for the ordinary
 business thereof.

7. In case of the death of said.....during the
 continuance of the partnership, his capital shall (except as
 hereinafter provided), if his executors so elect, remain in and at
 the risk of the business for a period of five years (or so much
 thereof as his executors may determine) after the.....day
 of.....next after his death, his estate to receive all
 interest, dividends, profits and other emoluments of the
 partnership the same as would have been the case if he had

lived; except that for the second of said five years the proportion of net profits to be paid to his estate shall be reduced to%, for the third of said years to%, and for the fourth and fifth of said years to% of such net profits. This right of the executors of said..... to leave his capital in the business shall apply to said business continued under the said firm name as hereinafter provided, although changes in the personnel of said partnership should take place other than such removal by death of said.....: therefrom.

8. In case of the death of either of the other partners during the continuance of this partnership, his capital shall, if the surviving partners so desire, remain in and at the risk of the business until one year after the.....of.....next following his death, his estate to receive all payments by way of interest, dividends, "drawings" or shares of profits which he would have been entitled to receive if he had lived.

9. But if, prior to the death of any partner, a time shall have been fixed for termination of the partnership as hereinbefore provided, nothing in the foregoing provisions with respect to capital remaining in the business shall require a continuance of the partnership beyond the date so fixed for its termination.

10. The personal representatives of a deceased partner shall have no right to take part in the management of the business, nor shall the general estate of a deceased partner (beyond the amount of his capital remaining in and at the risk of said business as above provided) be liable for any debts, obligations, liabilities or losses of the partnership arising after his death.

11. Upon any distribution being made either to the representatives of a deceased partner or to a partner retiring by mutual agreement, such representatives or retiring partner shall not be entitled to receive anything on account of the good-will of the partnership.

12. Upon termination of this partnership by expiration or otherwise, if said....., either alone or with any one or more of the other partners, shall continue in the same or similar business, he or they shall be entitled to continue the

use of the firm name, but if said.....shall not continue in the same or similar business, then any two or more of the other partners who shall form a partnership to continue in the same or a similar business shall be entitled to continue the use of the firm name.

13. No partner shall execute or endorse personal notes or other obligations without advice to the other partners that he proposes to do so.

14. This agreement supersedes the partnership agreement heretofore existing between the same parties.....

Partnership Agreement—Partners to Devote Time to Partnership Exclusively—No Speculative Ventures Without Knowledge of Other Partners—Legal Representatives to Assume Rights and Liabilities of Deceased Partner but with no Voice in Business

AGREEMENT made.....between.....

WHEREAS, the parties above named intend to form a copartnership for the purposes hereinafter stated;

NOW, THEREFORE, in consideration of the premises and of the sum of One Dollar to each in hand paid by the other, the receipt of which is hereby acknowledged, and in further consideration of the mutual covenants and agreements herein contained, it is hereby agreed by and between the parties hereto as follows:

1. The name of the firm shall be....., and the partners in such firm shall be the parties to this agreement.

2. The objects for which said copartnership is formed are....., in..... and in such other places as may be hereafter mutually agreed upon.

3. The said copartnership shall begin on..... and end on.....

4. The capital of said firm shall be the sum of \$....., and shall be subscribed as follows:

5. The net profits which may result from the conduct of

said business as the same shall be ascertained as hereinafter provided, shall be divided among said partners in the following proportions:.....

Any losses sustained in the conduct of the business shall be divided and borne in the same proportions.

6. Upon the last day of each month during the term of this copartnership agreement, or any extension thereof, there shall be credited to each partner upon the firm books, interest at the rate of.....% per annum upon all sums of money contributed and paid in by him as capital, and standing to his credit as such on the said books, such interest to be calculated from the date upon which said sums were contributed, or the date upon which interest was last credited upon said sums upon the books of the copartnership up to the last day of each month during the continuance of this copartnership agreement, or any extension thereof, and in the event of the termination of the copartnership, either by expiration, or limitation or otherwise, interest shall in like manner be so credited at the date of said expiration by limitation or other termination. And on and after the last day of each month the said partners shall have the right to draw out any such sums credited to their accounts as interest, as provided for in this paragraph.

7. During the continuance of this agreement there shall be paid to.....(*one of the partners*) the sum of \$.....per year by way of compensation to him for the advantage arising to said firm out of his....., such payment to be made in equal monthly instalments, but to continue during the term of this agreement only so long as he shall (*stating the circumstance for which payment is made*).

8. After the payment of all the expenses of said copartnership, including interest upon the capital subscribed thereto, and the amount specified to be paid to said..... as provided in the preceding paragraph, six months from the commencement of this copartnership agreement, or more often by consent of the parties hereto, and also at the expiration, or other termination thereof, the books of said copartnership shall be balanced and a balance sheet shall be delivered

to each partner showing the profits or losses from said copartnership, as the same shall have been accurately ascertained, and such profits shall be shared by and divided between and credited to and such losses borne by and charged to the said copartners in the proportions hereinabove set forth, and thereupon each partner shall be permitted to draw out his share of the profits, if any, so credited for the period during which the said books of said copartnership shall have been balanced.

9. It is covenanted and agreed by and between each of the parties hereto that he will not use the name or property of the said copartnership for his own private purposes, nor for any purposes whatsoever except such as may be incidental to the conduct and management of the said business in a proper manner, nor will he use the name of said copartnership for the use or accommodation of any other person, and the parties hereby agree not to engage in any other business in his or their own names or for his or their own account or benefit, or with any other person or persons, but agree to devote their entire time, attention and energy solely to the business of the said copartnership and to use his and their best endeavors to promote its interests, and the parties hereby further agree that he or they will not use his or their own names for the use or accommodation of any person, or become bond, surety, security, endorser or guarantor for any person, or purchase or sell, or agree to purchase or sell for his or their own benefit, or upon his or their own liability, any stocks, bonds or securities on a margin, or engage in any speculation in stocks or other securities or commodities without the knowledge and consent of the other parties hereto.

10. In case of the violation of any of the provisions of this agreement by any one of the partners, any partner not so violating the same, or his legal representatives, may at his or their option, and he and they are hereby authorized and empowered to terminate and dissolve the said copartnership immediately by giving a written notice of his intention to terminate and dissolve the same to the other partners and the said copartnership shall thereupon at the date specified in such notice be terminated and dissolved. Such notice may be given and served either by delivery thereof personally to the

person to whom it is addressed, or by leaving the same directed to him at the principal place of business of the said copartnership in the City of.....

11. In the event of the death of a partner during the period for which this copartnership is formed, it is hereby agreed that the business of said copartnership, at the option of the surviving partner or partners, may be continued for a period not exceeding six months from such date, upon notice to be given by such surviving partner or partners to the legal representatives of said deceased partner, but such period in no event shall be construed to extend beyond the time when such copartnership would have been terminated under the conditions of this agreement. And it is further agreed that the legal representatives of such deceased partner shall be entitled to the same participation in the profits of said business and bear the losses in the same proportion as such deceased partner would have been entitled to or obligated for if living, under the terms of this agreement. The legal representatives of such deceased partner shall be afforded all reasonable opportunity for an inspection of the books and business of said copartnership as will enable them to follow at all times and from time to time the conduct of said business and satisfy themselves that it is being managed in accordance with the provisions of this agreement; provided, however, that such legal representatives shall have no voice in the control and management of said business. Said legal representatives shall have the same rights of immediate termination of said copartnership as the deceased partner would have had under paragraph 10 of this agreement, if living, and at the expiration of such period the said copartnership shall be terminated and its affairs liquidated by the surviving partner or partners under the conditions as above set forth.

IN WITNESS WHEREOF, each of the parties, for himself, has hereunto set his hand and seal, the day and year first above written.

Partnership Agreement—Partners Admitting Employees as New Members—Partners Retaining Ownership of Present Assets and Good-will—Drawing Accounts—Death of One of Partners

AGREEMENT, made....., between.....
, hereinafter described as the "Present Partners," and....., hereinafter described as the "New Partners," severally of the City and County of.....

WHEREAS the Present Partners have for many years last past been engaged in business as.....in the City of....., under the firm name and style of....., which partnership, by its existing articles, expires on the.....day of....., in the year..... and

WHEREAS said Present Partners have agreed to take into said firm and to associate with themselves as members of the existing firm the above-named New Partners, who have severally been in the employ of said firm for many years last past, upon the terms and conditions herein set forth;

NOW, THEREFORE, THIS INDENTURE WITNESSETH: That the said parties hereto, for and in consideration of the premises and of the mutual covenants herein contained, and of the sum of one dollar to each in hand paid by the other, have mutually covenanted and agreed as follows—

1. The said business shall be continued as heretofore, in the City of....., under the firm name and style of.....

The said copartnership shall commence as of....., and shall continue until and including the.....day of.....

2. Inasmuch as the Present Partners have contributed to such copartnership the entire plant and the existing capital, it is agreed that the good-will of the said business, the firm name and the plant and capital, and any lease of offices held or to be held during the partnership, shall be the exclusive property of the Present Partners and that on the dissolution of the firm, or in case of the death of any of the New

Partners, no interest shall exist in favor of such New Partners, or any of them, or their representatives.

3. The said New Partners shall severally respectively devote their whole time and energy exclusively to the business of the firm.

4. Regular books of account are to be kept, and the financial business and affairs of the firm shall be under the general management of (one of the Present Partners) and shall be conducted as heretofore.

5. Said Present Partners shall each receive per cent, and the said New Partners shall each receive per cent out of the profits of the firm in each and every year during the partnership.

The said Present Partners shall be entitled to draw \$. each on the first of each and every month; and the said New Partners shall be entitled to draw the sum of \$. each, in each and every week; and settlements shall be made once in months of profits based on actual receipts only, and debits entered in case of over-payments by such monthly or weekly drawings, or additional divisions made in case further profits are on hand for division.

6. It is further agreed that the death of any of the parties hereto during the continuance of this agreement shall not operate as a dissolution of said copartnership, but the same shall be carried on by the survivors for the full term of the partnership as is herein provided, accounting being made to the deceased partner's representatives for the interest of the deceased partner at the time of his death, the value of the deceased partner's interest to be fixed in every instance by the surviving partners, if any question or difference arises; the capital of the firm, however, shall remain, in case of the death of any partner until the expiration of the partnership. All profits received after the date of this instrument, whether for new or old business, shall be deemed profits of the firm as hereby constituted and divided as is herein set out.

(Alternative Provision as follows:)

6. It is further agreed that the death of any of the parties hereto during the continuance of this agreement shall not operate as a dissolution of said copartnership, but the same

shall be carried on by the survivors *for the full term of the partnership* as is herein provided, accounting being made to the deceased partner's representatives for the interest of the deceased partner at the time of his death, the value of the deceased partner's interest to be fixed in every instance by the surviving partners, if any question or difference arises; the amount to which the estate of a deceased partner shall be entitled for profits, interest in the firm, good-will or otherwise, shall be the amount to which such deceased partner shall be entitled on the day of his death, and, in addition thereto, an amount equal to a share in the profits of the firm, according to the partnership articles, for six months following the date of his death, to be made up in the usual manner by balancing the books. These amounts shall be conclusive, and the only amounts to which a deceased partner's estate shall be entitled for any interest of such deceased partner in the firm, of any kind or nature. The good-will, and the firm name, plant and capital shall remain, as heretofore, the property of the surviving members of the original firm, and shall belong to the survivor of them; the capital of the firm, however, shall remain, in case of the death of any partner, *until the expiration* of the partnership. All profits received after the date of this instrument, whether for new or old business, shall be deemed profits of the firm as hereby constituted and divided as is herein set out.

7. It is further agreed that none of the parties hereto shall, without the consent in writing of all of the other parties, in any way use the firm name or credit, either directly or indirectly, whether by endorsement, guaranty or otherwise, except for firm business; and none of the parties shall, without like consent, become endorser, guarantor or surety for any other person.

8. This agreement shall bind the several parties, their and each of their executors, administrators and assigns.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written.

Partnership Agreement—Senior Member Owning All Assets and Directing Financial Affairs and Business of Partnership—Payments to Estate of Deceased Partner—Use of Firm Name

AGREEMENT made.....between....., hereinafter described as the Senior Member,....., hereinafter described as the Other Present Partners and, hereinafter described as the New Partner.

WHEREAS the parties hereto, with the exception of the New Partner, have heretofore been partners in business as..... under the firm name of....., which partnership expires this day; and

WHEREAS the parties hereto desire to continue said business;

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

THAT the parties hereto have agreed as follows:

1. Said business shall be continued by the parties hereto as partners under the same firm name until and including theday of.....

2. The good-will, firm name, plant, contracts and capital of the predecessor partnership, and any lease of offices held by it are now the exclusive property of the Senior Member. Any further good-will, plant, contracts, capital and leases acquired by this partnership shall be the exclusive property of said Senior Member. The use of the foregoing assets, however, is contributed by said Senior-Member to this partnership for the term thereof, subject to the assumption by this firm of all the liabilities attaching thereto. Any of such liabilities remaining at the end of said term shall be assumed by said Senior Member unless this partnership shall be extended. Except as herein expressly provided, no other partner shall have any interest in any of the assets of this partnership.

3. The said Other Present Partners and New Partner shall devote their time and energy exclusively to the business of this partnership.

4. The financial business and affairs of this partnership shall be under the management of said Senior Member, who shall determine from time to time the amount of profits to be

divided, and the partners shall be entitled to share only in profits divided within the term of the partnership in accordance with his determination.

5. The division of net profits shall be as follows:

.....
.....
.....

6. All profits divided after the date of this instrument, whether on new or old business, shall be deemed profits of this partnership and divided as herein set out.

7. The Senior Member shall be entitled to draw \$. on the first of each month, and the said Other Present Partners and New Partner shall each be entitled to draw the sum of \$. on the first of each month; the amounts so drawn to be charged as anticipated payments of profits.

8. The death of any party hereto during the term of this partnership shall not operate as a dissolution of the partnership, but the same shall be carried on by the survivors for the remainder of said term.

9. In case of the death of the Senior Member during said term, the surviving partners shall pay to the representatives of his estate the sum of \$. and shall indemnify his estate against all liabilities and obligations of this partnership or any predecessor, and thereupon the surviving partners shall be, and shall be deemed to be, at the date of the death of said Senior Member, the owners of the good-will, firm name, plant, contracts, capital and other assets of this partnership and its predecessors, subject to the following agreement as to the use of the firm name: After the death of said Senior Member, the surviving partners shall carry out all existing contracts under the firm name of : and for three years after the death of said Senior Member, but not longer, new business may be taken under said firm name. After the adoption of a new firm name, however, the survivors shall have the right, so long as any three members of the present firm remain members of the new firm, to couple with the new firm name the phrase "Successors of"

10. In case of the death of any other partner during the term of this partnership, the surviving partners shall pay to

the representatives of his estate the sum of \$.....
and the surviving partners shall assume, and hereby agree
in such case to assume, all liabilities and obligations of this
partnership or any predecessor.

11. In case of the death of any partner, the representatives of
his estate shall accept the sum agreed to be paid as above pro-
vided as a full and final settlement of the amount to which the
estate of such deceased partner shall be entitled, without any
investigation or examination of the partnership property,
books or accounts on the part of such representatives or of any
other person in the interest of the estate of such deceased par-
tner.

12. No party hereto shall, without the consent in writing
of all of the other parties, in any way use the firm name or
credit, either directly or indirectly, whether by endorsement,
guaranty or otherwise, except for firm business, and no party
shall, without like consent, become endorser, guarantor or
surety for any other person.

13. This agreement shall bind the several parties, their
executors and administrators.

IN WITNESS WHEREOF the parties hereto have hereunto set
their hands and seals the day and year first above written.

Limited Partnership—General Form—Special Provisions

AGREEMENT, made this.....day of....., 19.,
between....., hereinafter described as the General
Partners and....., hereinafter described as the
Special Partner.

WITNESSETH:

1. Said parties hereby form a limited partnership for the
purpose of conducting a general business in.....,
and all business incidental thereto, under the firm name and
style of....., said business to have its headquarters
in the City of.....

2. Said partnership shall commence on the..... day
of....., and shall terminate at the close of business
on the.....day of.....

3. The capital with which said partnership shall commence business is \$.....in cash. Of the cash capital, \$..... is contributed by the said....., \$.....is contributed by the said....., \$.....is contributed by the said....., and \$.....is contributed by the said..... The respective contributions aforesaid, and any additions thereto by any of the partners, as hereinafter provided, as between the partners and for all purposes of division of profits and settlement of partnership affairs, shall be treated as loans by the said partners respectively. Each partner shall be entitled to receive interest at the rate of six per cent per annum, payable quarterly, upon the amount of the said contribution made by him before any profits shall be estimated or divided. Interest upon the capital contributed by said.....shall be paid before the interest upon the capital contributed by the other members of the partnership, and, as between said partners, shall be entitled to priority. Any partner may, with the assent of the others, increase his contribution, and thereby increase the amount upon which he shall receive interest, but not thereby varying his share in the profits of the partnership, as herein-after fixed.

4. Each of the said General Partners shall receive compensation for services rendered in connection with the business of the partnership in the form of a salary, which shall be paid to each monthly. Said.....shall receive for his services a salary of \$.....a year. Said..... shall receive for his services a salary of \$.....a year. Said.....shall receive for his services a salary of \$.....a year. Said.....shall receive for his services a salary of \$.....a year. The fiscal year of the partnership shall be from.....to.....

5. After payment of the expenses of the partnership, including said salaries paid to the General Partners, the net profits of the business shall be divided and distributed quarterly beginning at the close of business on....., as follows: Said Special Partner shall receive.....% upon the first, or any part thereof, of said net profits and% on all net profits in excess of \$..... The

net profits remaining after the said payments to the said
shall then be divided and distributed as follows:

Said.....shall receive.....% thereof.

Said.....shall receive.....% thereof.

Said.....shall receive.....% thereof.

Said.....shall receive.....% thereof.

The losses, if any, incurred by said partnership shall be borne by the General Partners in the above proportions.

6. By mutual consent or by action of a majority of the General Partners, the salaries of any of the General Partners may be changed and the percentage of distribution of the net profits of the business may be changed without dissolution of the partnership; provided, however, that the total amount paid in salaries shall not be increased without the consent of the said.....

7. None of the General Partners shall carry on any individual speculations. None of the General Partners shall become surety or guarantor upon any bond or undertaking, nor borrow any money, nor execute any note, undertaking or obligation whatever, without the consent of the other General Partners, nor shall any General Partner sign the firm name or otherwise contract for the firm, except in and for the regular and ordinary business thereof. The Special Partner shall not sign for the partnership nor bind the same, nor transact any business on account of the partnership, nor be employed for that purpose as agent, attorney or otherwise.

8. In the event of the death of said....., said partnership shall cease. The death of any of the other General Partners or of the Special Partner shall not operate to dissolve the partnership, but the same may be carried on at the option of the surviving partners for a period not to exceed twelve months from the death of any of said partners. In case the said partnership is continued, the surviving partners may pay the cash capital contributed by the deceased partner to his legal representatives in full upon the last day of the current or any succeeding quarter, and thereupon the partnership shall terminate. In any event, however, not less than one-half of the cash capital contributed by the deceased partner shall be paid to his legal representatives within six months

from the date of his death, and the remaining one-half of the cash capital contributed by him within twelve months from the date of his death. So long as any of the cash capital contributed by the deceased partner shall remain in the business, his legal representatives shall be entitled to participate in the profits of the partnership upon the same basis as the deceased partner would have participated had he survived. Under no circumstances shall the legal representatives of the deceased partners have any right of active control or interference in the affairs of the partnership.

9. In the event of the death of the said....., the right to the use of the firm name,..... shall cease as soon as the said.....'s interest in said partnership shall terminate. In case of the dissolution of said partnership for any cause other than the death of the said....., the right to the use of the firm name,..... shall belong to the said....., and the other parties hereto agree to make no claim whatever to the right to the use of the said name.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written.

Partnership Agreement—Miscellaneous Provisions of Special Nature

AGREEMENT dated.....between....., hereinafter referred to as the "First Partner," and....., hereinafter referred to as the "Second Partner."

WITNESSETH:

1. The First Partner and the Second Partner agree to form a partnership to engage in the business of manufacturing and selling....., under the firm name of....., hereinafter referred to as the "partnership."

2. The partnership hereby created is to begin on the day of the execution hereof and to continue until..... At the date last mentioned, the partnership is to be deemed renewed for an additional period of.....years, unless one of the parties shall, more than.....months prior to such date, give written notice to the other of his intention

to terminate such partnership. Similarly, at the expiration of each term of years hereunder, the partnership shall be deemed renewed for an additional period of years, unless one of the parties shall give at least months' written notice to the other of his intention to terminate the partnership at the end of such year period. The mailing of such notice hereunder by either party to the other at the last known residence address of the other party, shall be deemed sufficient notice of termination.

3. The Second Partner has contributed the sum of \$ to the capital of the partnership; the First Partner will contribute the sum of \$ to the capital of the partnership within one month from the date hereof; provided that before the end of such month, the Second Partner shall have furnished a bond in accordance with the provisions of Paragraph "9." hereof, or the First Partner or his attorney, shall have waived in writing, the furnishing of such bond. Such contributions shall not bear any interest. The parties hereto or either of them may, from time to time, make further contributions upon such terms as may be agreed upon between them. Should any such further contributions to the firm be made, without express agreement as to the terms thereof, such further contributions shall, as between the parties hereto, be deemed loans by the party so contributing to the firm and shall bear compound interest at the rate of five (5%) per cent per annum compounded annually from the date of such contribution.

4. The main office, factory and headquarters of the partnership shall be located within the City of , or at such other place or places as may be agreed upon by the parties hereto.

5. The actual management of the business shall be in the hands of the Second Partner. The Second Partner agrees to devote his best efforts to the management of the said business and to the furtherance of its objects and to the profit of the said business and will devote all his time to the partnership business. It is understood that the First Partner is engaged in the business of dealing in the City of , State of ; such business of the First Partner is ex-

pressly permitted and allowed and shall not be deemed in any way a breach of his obligation hereunder nor shall he be in any way called upon to account to the Second Partner for any profits he may make in connection with such business. The First Partner shall devote only such time and efforts to the partnership business as it shall be reasonably possible for him to devote in view of his other business interests.

6. In compensation for the services of the Second Partner to the partnership, he shall receive a weekly salary of \$....., which shall, as between the parties hereto, be deemed an expense of the business.

7. All disbursements and expenses, including the salary hereinbefore provided to be paid to the Second Partner, all receipts, and all profits and losses shall be divided equally between the parties hereto. The Second Partner shall keep just and true books of account, and shall, on the.....day of.....and every.....months thereafter, render a statement to the party of the first part, showing receipts, disbursements, profits and losses and all facts relating to the financial condition of the business.

8. The Second Partner will take care that any employee or employees of the partnership who may or shall have actual occasion to handle money, shall furnish and keep in force, satisfactory surety company bonds for the faithful performance of their duties.

9. The Second Partner shall within one month from the date hereof furnish and thereafter keep in force a satisfactory surety company bond in the sum of \$....., conditioned for the faithful performance of his duties hereunder, unless on or before the expiration of such month, the First Partner, or his attorney,.....shall, in writing, waive this requirement. After this requirement is so waived, the First Partner may, at any subsequent time during the term hereof give notice to the Second Partner that he furnish such bond and in that event the Second Partner shall furnish such bond within one month after the date of such notice.

10. The bank account of the partnership shall be kept in the firm name at such Bank or Banks within the City of

....., as may be deemed advisable. The Second Partner shall have power to draw checks in the firm name. No note shall be drawn in the firm name except upon the signature of both partners.

11. Unless otherwise mutually agreed, all profits hereunder shall be divided between the respective parties hereto on....., and on.....of each subsequent year.

12. As hereinbefore stated, it is understood that the First Partner is the controlling interest in a corporation engaged in the business of buying and selling.....in the City of....., State of....., and intends to continue in such business, either as the controlling interest in the said corporation or otherwise. It is understood and agreed that the First Partner or the firm, corporation or partnership in which he may be interested, shall purchase weekly from the partnership hereby created, at least.....
..... The First Partner shall have the privilege upon giving at least..... months' notice of requiring more than.....weekly. It is agreed that the partnership hereby created shall produce, deliver and sell to the First Partner, or to such firm, partnership or corporation in which he may be interested, such styles, qualities and quantities of.....as he may, from time to time, require in accordance with the terms hereof. It is further agreed that all.....sold by the partnership hereby created to the First Partner or to the firm, corporation or partnership in which he may be interested, shall be sold for a price equal to \$.....in excess of the cost of manufacturing such..... The term "cost" as herein used shall be deemed to include.....

13. It is agreed that all profits realized by the partnership through the transactions set forth in this last foregoing paragraph shall be deemed partnership profits. All.....so purchased by the First Partner or by the firm, corporation or partnership in which he may be interested; shall be deemed purchased for the sole benefit of the First Partner or of the firm, corporation or partnership in which he may be interested; and any profits realized by the re-sale of

such.....shall be deemed solely the profit of the First Partner or of the corporation, firm or partnership in which he may be interested; and the First Partner shall not be accountable to the Second Partner in any way for such profits.

14. It is agreed that the partnership hereby created shall undertake to sell to all firms, located in that part of the United States of America which is situated East of a line to be drawn along the western boundary of..... and will not undertake to sell to any firms situated West of such line; that on the other hand the First Partner and any firm, corporation or partnership which he may control, other than the firm hereby created, shall not undertake to sell to any firms East of such line.

15. The Second Partner agrees that he will not, during the term hereof, endorse any note or become surety for any person or persons whatsoever, without the consent of the First Partner.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written.

Agreement for Dissolution of Partnership—Simple Form

AGREEMENT made this....., between.....
(*stating names and addresses of various partners*)

WITNESSETH:

That for and in consideration of the sum of One Dollar (\$1.00) to each of the parties by each of the others in hand paid, the receipt of which is hereby acknowledged, the parties aforesaid agree as follows:

1. The partnership heretofore conducted under the firm name and style of.....pursuant to a certain agreement entered into by them bearing date....., is hereby terminated and dissolved.

2. Each of the parties does hereby remise, release and forever discharge each and every of the others, their and each of their heirs, executors and administrators, of and from all, and all manner of action and actions, cause and causes of actions, suits, debts, demands, sums of money, accounts,

reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law or in equity, which each party ever had, now has or which his heirs, executors or administrators hereafter can, shall or may have, against any or all of the others upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the date hereof, by reason of any transactions in connection with said partnership or anything whatsoever growing out of the previous relations of the said parties as members of the said partnership.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written.

Agreement of Dissolution of Partnership—Another Form

AGREEMENT made.....between....., hereinafter described as First Partner,....., hereinafter described as the Second Partner and....., hereinafter described as the Third Partner

WITNESSETH:

WHEREAS the said Partners are copartners carrying on business under the firm name of.....as manufacturers of and dealers in.....and kindred articles and

WHEREAS it is intended to dissolve the said partnership and

WHEREAS the Second and Third Partners are to convey and assign their interests therein and all the assets and properties thereof, both tangible and intangible, to the First Partner and

WHEREAS the dissolution is conditioned upon the payment in full of the installment due on....., as hereinafter provided.

IN CONSIDERATION of the premises and covenants herein contained the parties do hereby agree as follows,.....

1. The Second and Third Partners do hereby assign, transfer and convey unto the First Partner all their part or share and interest in all the leases, real property, and in the fixtures,

machinery, whether fixed or movable, patents, patent rights, trade-marks, trade names, plant, stock in trade, book and other debts, contracts, assets, business, good-will of the said partnership, and the sole right to the use of the name ofand....., all of the said premises absolute.

2. The purchase price shall be the sum of \$ payable by the First Partner as follows,

\$.....in cash on the signing and sealing hereof, receipt whereof is hereby acknowledged.

\$.....in either cash or certified check on, at the office of....., atnoon.

The sum of \$.....monthly from the.....to, payable on the first of each and every month, and thereafter the sum of \$.....monthly payable from.....on the first of each and every month thereafter for.....successive months, interest on said payments to be at the rate of.....per centum per annum from..... The said instalments are to be paid in equal amounts each and every month separately to the said Second and Third Partners. Said installments are to be evidenced by notes, one-half of the installment in each month to be to the order of the Second Partner and one-half to the order of the Third Partner. All of the said notes and all payments after.....are to be secured by a mortgage to be executed and delivered by the First Partner to the Second and Third Partners, covering.....undivided share and interest in all of the real estate at....., subject to two prior mortgages now existing thereon. The bond and mortgage shall be drawn at the expense of the First Partner, who shall pay for the recording and stamps.

3. The First Partner shall have the right to anticipate any and all payments herein provided for.

4. If there be default in the payment of any of the said notes for a period of thirty days, then the whole amount of indebtedness still due and owing shall, at the option of the Second and Third Partner become due at once.

and demands whatsoever which such respective releasing party has against the other of them on account of the said partnership or anything relating thereto, but so nevertheless that this present release shall not prejudice or affect any of the covenants, agreements or provisions herein contained or the rights or remedies of the said respective parties.

IN WITNESS WHEREOF the parties have hereto set their hands and seals this . . . day of

Agreement for Dissolution of Partnership—Assignment of Some of Assets—Equalization of Capital Contributions—Accounting

AGREEMENT made this . . . day of by and between hereinafter described as the First Partner and, hereinafter described as the Second Partner.

In consideration of the sum of One Dollar, paid by each of the parties hereto to the other, receipt whereof is hereby acknowledged, and in further consideration of the mutual promises, covenants and agreements herein contained, it is hereby agreed by and between the parties hereto as follows:

1. The copartnership existing between the parties hereto under the name of pursuant to the partnership agreement dated is hereby terminated and is to be liquidated as of the close of business on the day first above written. No further business or obligations on behalf of said copartnership shall be transacted or incurred by either of the parties hereto excepting for the purposes of carrying out said liquidation.

2. Said First Partner hereby sells, assigns, transfers and sets over unto said Second Partner all his right, title and interest in and to, and in relation to, all property of every kin, name and nature and wherever situated of said copartnership, excepting the following:

(a) The commercial paper of said copartnership either on hand or out on option and any sums owing to said copartnership other than the Liberty Bonds hereinafter mentioned:

(b) Cash on hand or on deposit.

(c) The lease of the offices of said copartnership at

3. In the copartnership accounting, on winding up its affairs, said Second Partner is to be debited with the furniture and \$. face value of 4 per cent United States Liberty Bonds, all at the cost price thereof as shown by the books of said copartnership.

4. There shall be no distribution among the parties hereto as such partners of cash of said copartnership until all liabilities thereof, other than on said lease, are settled, and said commercial paper and sums due said copartnership mentioned in subdivision (a) of paragraph 2 hereof have been either sold at prices mutually agreed upon or collected. When all liabilities of said copartnership, other than on said lease, have been paid, distribution of funds on hand shall be made to said First Partner on account of his capital account in said copartnership until his capital therein is reduced to an amount equal to the capital account of said Second Partner in said copartnership. The foregoing provisions of this paragraph, however, shall not apply to the assets of said copartnership which on the date hereof are to become the property of said Second Partner as aforesaid. After all liabilities of said copartnership have been paid or liquidated there shall be an accounting and final distribution among the parties hereto.

5. On and after the. no check on any bank account of the said copartnership shall be drawn by either party hereto without the countersignature of the other party hereto.

6. This agreement shall bind and inure to the benefit of the parties hereto, their respective executors, administrators and assigns.

IN WITNESS WHEREOF each of said parties has hereunto set his hand and seal, in duplicate, the day and year first above written.

Purchase by Surviving Partner upon Death of Partner

AGREEMENT made., between.
and., WITNESSETH:

WHEREAS we are and have been for some time past partners doing business under the firm name of., and desire

to provide for the sale of the business of said firm in the event of the death of either one of the partners by the purchase by the survivor of the interest of the deceased, we therefore agree as follows:

1. Upon the death of one of us, the business shall be continued until the.....succeeding the death of the deceased partner, and the surviving partner shall have the option to keep invested in the business of the firm, as a loan, the amount of capital appearing upon the books of the firm to the credit of the deceased partner upon the first day of..... following the death of said deceased partner, and after the taking of inventory, the amount of capital appearing on the books of the firm to the credit of the said deceased partner, upon the following terms and conditions:

2. If the surviving partner shall elect to exercise this option, he shall serve upon the legal representatives of the deceased partner, by registered mail within thirty days from the issuance of letters of administration or letters testamentary to the legal representatives of the deceased partner, written notice of such election.

3. The surviving partner shall pay interest at six per cent on the amount invested in said business on the first days of February and August, and the estate of the deceased partner shall not be entitled to any additional profits of the said business after.....succeeding his death.

4. The surviving partner hereby agrees to hold the estate of the deceased partner harmless from any and all loss which shall be sustained by the partnership subsequent to..... after his death.

5. The surviving partner shall pay the amount of the capital to the credit of the deceased partner on.....succeeding his death, to his legal representatives in five equal installments as follows: one, two, three, four and five years after the first day of February succeeding the death of said partner.

6. It is agreed that the estate of the deceased partner shall not be liable for any debt incurred after.....succeeding his death.

7. The surviving partner may at any time prior to the time fixed for the making of the payments provided for in clause

(d) pay the same to the legal representatives of the deceased partner at the expiration of thirty days after the personal service of a written notice of his intention to make such payment.

Agreement of Partner to Withdraw upon Payment

Williston, Sections 521, 1868.

AGREEMENT made.....between.....
 hereinafter referred to as the retiring partner, and.....
hereinafter referred to as the continuing partners,
 WITNESSETH:

1. The retiring partner hereby withdraws from the firm ofof which he up to this date has been a partner, and hereby sells, assigns, transfers and sets over to the continuing partners, all his right, title and interest in and to said firm and in and to the assets and property of said firm, upon the following terms, which the continuing partners agree to conform to and comply with:

2. The continuing partners agree to pay and discharge all debts and liabilities of said firm and to indemnify, save and keep harmless the retiring partner of and from any liability therefor.

3. The continuing partners agree to pay to the retiring partner \$.....

CONTRACTS AFFECTING REAL PROPERTY ¹

Contract for Purchase and Sale of Real Property

Form used by Lawyers Title & Trust Company of New York.²

Williston, Sections 411, 430, 487, 488, 494, 519, 523, 578, 586, 675, 723, 729, 767, 791, 841, 847, 852, 853, 854, 923, 924, 925, 926 note, 930, 936-938, 940, 1347, 1399, 1400, 1430, 1443, 1456, 1480 note, 1571, 1642, 1705, 1919, 2002.

AGREEMENT made and dated.....
between.....
hereinafter described as the seller, and.....
hereinafter described as the purchaser.

WITNESSETH, that the seller agrees to sell and convey and the purchaser agrees to purchase all that lot or parcel of land, with the buildings and improvements thereon, in the.....

1. The price is.....
DOLLARS, payable as follows:.....
DOLLARS on the signing of this contract, the receipt of which is hereby acknowledged.
DOLLARS in cash on the delivery of the deed as hereinafter provided.

Said premises are sold subject to building restrictions and regulations in resolution or ordinance adopted by the Board of Estimate and Apportionment of the City of New York, July 25, 1916, and amendments and additions thereto now in force.

2. THE DEED shall be delivered upon the receipt of said payments at the office of.....
at.....o'clock on....., 19...
Rents and interest on mortgages, rents of gas ranges.....
if any, are to be apportioned.

3. If there be a water meter on the premises, the seller shall furnish a reading to a date not more than thirty days prior to

¹ See page 458, for leases.

² Numbers were assigned to paragraphs by the author for convenience of reference.

date herein set for closing title and the unfixed meter charge for the intervening time shall be apportioned on the basis of such last meter reading.

4. If at the time of the delivery of the deed the premises or any part thereof shall be or shall have been affected by any assessment or assessments which are or may become payable in annual installments of which the first installment is then due or has been paid, then for the purposes of this contract all the unpaid installments of any such assessment, including those which are to become due and payable after the delivery of the deed, shall be deemed to be due and payable and to be liens upon the premises affected thereby and shall be paid and discharged by the seller thereof, upon the delivery of the deed.

5. The deed shall be in proper statutory short form for record, shall contain the usual full covenants and warranty, and shall be duly executed and acknowledged by the seller, at the seller's expense, so as to convey to the purchaser the fee simple of said premises, free of all incumbrances except as herein stated.

6. This sale covers all right, title and interest of the seller of, in and to any land lying in the bed of any street, road or avenue opened or proposed, in front of or adjoining said premises to the centre line thereof, or all right, title and interest of seller in and to any award made or to be made in lieu thereof, and the seller will execute and deliver to the purchaser, on the closing of title, or thereafter, on demand, all proper instruments for the conveyance of such title and the assignment and collection of such award.

7. All personal property appurtenant to or used in the operation of said premises is represented to be owned by the seller and is included in this sale.

8. All notes or notices of violation of law or municipal ordinances, orders or requirements noted in or issued by any Department of the City and State of New York, against or affecting the premises at the date hereof, shall be complied with by the seller and the premises shall be conveyed free of the same. The seller shall furnish the purchaser with an authorization to make the necessary searches therefor.

9. All sums paid on account of this contract and the reasonable expense of the examination of the title to said premises are

hereby made liens thereon, but such liens shall not continue after default by the purchaser under this contract.

10. The risk of loss or damage to said premises by fire until the delivery of the deed is assumed by the seller.

11. The stipulations herein are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

12. The seller agrees that..... brought about this sale and agrees to pay the broker's commission therefor.

WITNESS the signatures and seals of the above parties. In presence of

Contract for Exchange of Real Property

Form prepared and used by Lawyers Title & Trust Company of New York.¹

Williston, Sections 411, 430, 487, 488-494, 519, 523, 578, 586, 675, 723, 729, 767, 791, 841, 847, 852, 853, 854, 923, 924, 925, 926 note, 930, 936 to 938, 940, 1347, 1399, 1400, 1430, 1443, 1456, 1480 note, 1571, 1642, 1705, 1919, 2002.

AGREEMENT, FOR THE EXCHANGE OF PROPERTY, made and dated.....

BETWEEN..... herein designated as the party of the first part, and..... herein designated as the party of the second part,

1. WITNESSETH: The party of the first part, in consideration of one dollar paid, the receipt of which is hereby acknowledged, and also in consideration of the conveyance by the party of the second part of the premises hereinafter secondly described, hereby agrees to sell and convey to the party of the second part, at a valuation for the purposes of this contract of.....

.....DOLLARS, all that lot or parcel of land, with the buildings and improvements thereon, in the.....

2. The party of the second part, in consideration of one dollar paid, the receipt of which is hereby acknowledged, and also in consideration of such conveyance by the party of the first

¹ Numbers were assigned to paragraphs for convenience of reference.

part, agrees to sell and convey to the party of the first part, at a valuation for the purposes of this contract of.....

.....DOLLARS, all that lot or parcel of land, with the buildings and improvements thereon, in the.....

3. The premises which are to be conveyed by the party of the first part are to be conveyed subject to the following incumbrances:

4. The premises which are to be conveyed by the party of the second part are to be conveyed subject to the following incumbrances:

5. The difference between the value of the respective premises, over and above incumbrances shall be deemed, for the purposes of this contract, to be.....dollars, and that sum shall be due and payable by the party of the part, as follows:

6. Said premises are sold subject to building restrictions and regulations in resolution or ordinance adopted by the Board of Estimate and Apportionment of the City of New York, July 25, 1916, and amendments and additions thereto now in force.

7. THE DEEDS shall be delivered and exchanged upon the receipt of said payments at the office of at o'clock on 19... Rents and interest on mortgages, rents of gas ranges..... if any are to be apportioned.

8. If there be a water meter on either of the premises, the seller thereof shall furnish a reading to a date not more than thirty days prior to date herein set for closing title and the unfixed meter charge for the intervening time shall be apportioned on the basis of such last meter reading.

9. If, at the time for the delivery of the deeds, either of the premises or any part thereof shall be or shall have been affected by any assessment or assessments which are or may become payable in annual installments of which the first installment is then due or has been paid, then for the purposes of this contract all the unpaid installments of any such assessment, including those which are to become due and payable after the delivery of the deed, shall be deemed to be due and payable and to be liens upon the premises affected thereby and shall

be paid and discharged by the seller thereof upon the delivery of the deed.

10. Each deed shall be in proper statutory short form for record, shall contain the usual full covenants and warranty, and shall be duly executed and acknowledged by the seller, at the seller's expense, so as to convey to the purchaser the fee simple of the premises respectively therein described free of all incumbrances except as herein stated.

11. This sale covers all right, title and interest of the seller of, in and to any land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining said premises, to the centre line thereof, or all right, title and interest of seller in and to any award made or to be made in lieu thereof, and the seller will execute and deliver to the purchaser, on closing of title, or thereafter, on demand, all proper instruments for the conveyance of such title and the assignment and collection of such award.

12. All personal property appurtenant to or used in the operation of either of said premises is represented to be owned by the seller thereof and is included in this sale.

13. All notes or notices of violation of law or municipal ordinances, orders or requirements noted in or issued by any Department of the City of New York against or affecting the premises at the date hereof, shall be complied with by the seller and the premises shall be conveyed free of the same. The seller shall furnish the purchaser with an authorization to make the necessary searches therefor.

14. All sums paid on account of this contract and the reasonable expense of the examination of the title to said premises are hereby made liens thereon, but such liens shall not continue after default by the purchaser under this contract.

15. The risk of loss or damage to said premises by fire until the delivery of the deed is assumed by the seller of each of said premises respectively.

16. The stipulations herein are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

WITNESS the signatures and seals of the above parties.
In presence of

Contract for Sale of Real Estate, reserving Right of Seller to Cancel in the Event of his Failure to Acquire Title

AGREEMENT made, between, hereinafter described as the Seller, and, hereinafter described as the Purchaser; WITNESSETH:

1. The Seller agrees to sell and convey or cause to be conveyed and the Purchaser agrees to purchase:

SUBJECT to any state of facts that an accurate survey would show.

SUBJECT to so-called zoning restrictions.

SUBJECT to lettings to present tenants, each of which is subject to cancellation on ninety days' notice.

SUBJECT to covenants and restrictions, if any, contained in prior deeds of record not violated by the present use of the premises and not preventing the use of said premises for business purposes.

The price is \$, payable as follows:

\$ on the signing of this contract, the receipt of which is hereby acknowledged.

\$ in cash on the delivery of the deed as hereinafter provided.

2. This contract is one of several contracts made simultaneously herewith: it is agreed that title under all of said contracts is to close simultaneously and if for any reason, any of said contracts shall fail of consummation, the Seller may cancel and annul this contract and the same shall be at an end and that neither party shall have any claim against the other thereon except that the Seller agrees to return to the purchaser said deposit with trust company interest thereon.

3. The Seller is not the sole owner of the said premises, but owns an undivided part thereof. The said premises are the subject-matter with other property of a partition action among the heirs of

4. It is agreed that the Seller will take immediate steps to procure the approval of this contract by

5. It is agreed that if for any reason the Seller should be unable to procure and convey title hereunder, then this con-

tract may be canceled and annulled by the sellers and the same shall thereupon be at an end and neither party shall have any claim against the other thereon except the sellers in that event agree to return to the purchaser the said deposit of \$. together with trust company interest thereon.

6. The sellers agree to maintain the said deposit intact pending this contract in the form of a certificate of deposit with the Equitable Trust Company to be taken in the name of, and to bear interest.

7. The deed or deeds shall be delivered upon the receipt of said payments at the office of,, on of, or sooner on five days' notice at the option of the Seller. It is agreed that in case the necessary consents and court orders shall not have been obtained by the Seller on or before the said last mentioned date the Seller shall be entitled to a reasonable adjournment for that purpose.

8. The deed or deeds shall be in proper statutory short form for record and shall be good and sufficient deeds, duly executed and acknowledged by the grantors at the Seller's expense so as to convey to the purchaser the fee simple of the said premises free of all encumbrances except as herein stated.

9. Rents and insurance premiums are to be apportioned as of the date of closing.

10. The risk of loss or damage to said premises by fire until the delivery of the deed is assumed by the sellers.

11. The stipulations aforesaid are to apply to and bind the heirs, executors, successors, administrators and assigns of the respective parties.

Contract for Purchase of Building to be Constructed

AGREEMENT, made and dated.,, between, residing at, hereinafter described as the seller and, residing at, herein described as the purchaser,

WITNESSETH:

1. The seller agrees to sell and convey, and the purchaser agrees to purchase all that lot or parcel of land, with the

buildings and improvements thereon, situate, lying and being in (*insert description*).

2. IT IS UNDERSTOOD AND AGREED that the Sellers shall immediately proceed with the construction of two buildings on the premises above described, in accordance with the plans and specifications made byArchitect, and which provides for the construction ofand shall be arranged for the occupancy of two families on the second and third floors, and two stores on the ground floor and another adjoining building on the west thereof, arranged for one store on the ground floor, and for the occupancy of one family on the second and third floors, and one family in the rear of the store.

3. IT IS AGREED that the said buildings shall be constructed not only in accordance with the plans and specifications aforementioned, but also in accordance with any requirements of the Building or Other Department, State or Municipal, and that the buildings shall not be deemed complete until certificates of occupancy have been duly issued by the Building Departments of the City of.....and same, together with necessary electrical certificates of the Fire Department and.....Board of Fire Underwriters, are delivered to the purchaser, and said buildings must be completed in each and every respect, water turned on, all plumbing and steam heat instruments, pipes and apparatus shall be found in good working order and condition and everything that is reasonably implied as necessary and proper towards the completion of a building has been done by the seller, so that the building, when completed, and possession delivered, will be ready for occupancy without requiring any further additions, amendments or improvements. There shall be no variation of the plans and specifications by the sellers unless required by such State or Municipal Departments, and unless it be by and with the consent of the purchaser in writing. The premises shall also be delivered broom clean at the time of the closing of title as herein provided.

4. IT IS ALSO UNDERSTOOD AND AGREED that should the sellers be unduly delayed through any cause over which they are unable to exercise any control and for which they are not

legally responsible, that then the time of the closing of title shall be deemed extended accordingly, but in no event, shall the purchasers be obliged to take title to said premises after the For the purpose of taking title, the sellers shall surrender simultaneously therewith the certificates of occupancy and the electrical certificates.

5. The price is \$. payable as follows:

6. The deed shall be delivered upon the receipt of said payment at the office of sellers at the expense of the purchaser, who shall also pay the mortgage tax, recording fees and United States Internal Revenue Stamps.

7. Rents and interest on mortgages,if any, are to be apportioned.

8. The seller agrees that.brought about this sale and agrees to pay the commission at the rates established or adopted by the.Board of Real Estate Brokers therefor.

9. This sale covers all right, title and interest of the seller, of, in and to any land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining said premises, to the centre line thereof, or all right, title and interest of the seller in and to any award made or to be made in lieu thereof, and in any award for damage to said premises by reason of change of grade of any street and the seller will execute and deliver to the purchaser, on closing of title, or thereafter on demand, all proper instruments for the conveyance of such title and the assignment and collection of any such award.

10. If there be a water meter on the premises, the seller shall furnish a reading to a date not more than thirty days prior to the time herein set forth for closing title and the unfixed meter charge for the intervening time shall be apportioned on the basis of such last reading.

11. The deed shall be in proper statutory short form for record, shall contain the usual full covenants and warranty, and shall be duly executed and acknowledged by the seller, at the seller's expense, so as to convey to the purchaser, the fee simple of the said premises, free of all encumbrances except as herein stated.

12. The seller shall give and the purchaser shall accept at

title such as the Title Guarantee and Trust Company will approve and insure.

13. All personal property appurtenant to or used in the operation of said premises is represented to be owned by the seller and is included in this sale.

14. All sums paid on account of this contract, and the reasonable expense of the examination of the title to said premises are hereby made liens thereon, but such liens shall not continue after default by the purchaser under this contract.

15. If there be a mortgage on the premises and such mortgage has been reduced by payments on account of the principal thereof, then the seller agrees to deliver to the purchaser at the time of delivery of the deed a proper certificate executed and acknowledged by the holder of such mortgage and in form for recording, certifying as to the amount of the unpaid principal sum of such mortgage and rate of interest thereon, and the seller shall pay the fees for recording such certificate.

16. All notes or notices of violation of law or municipal ordinances, orders or requirements noted in or issued by the Tenement House Department, Fire Department, Building Department, Department of Water Supply, Gas and Electricity, or any other State or Municipal Department having jurisdiction, against or affecting the premises at the date hereof, shall be complied with by the seller and the premises shall be conveyed free of the same. The seller shall furnish the purchaser with an authorization to make the necessary searches therefor.

17. Subject to Building Restrictions and regulations contained in a resolution or ordinance adopted July 25, 1916, by the Board of Estimate and Apportionment of the City of New York and amendments thereto.

18. The risk of loss or damage to said premises by fire until the delivery of the deed is assumed by the seller.

19. The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

WITNESS the signatures and seals of the above parties.

Agreement for Participation of Interest in Mortgage

Form prepared and used by Lawyers Title & Trust Company of New York.

Thomas *v.* Zahke, 181 App. Div. 173, 168 N. Y. Supp. 396;
Clare *v.* N. Y. Life Ins. Co., 178 App. Div. 877, 166 N. Y. Supp. 95;
Clare *v.* N. Y. Life Ins. Co., 100 Misc. 308, 166 N. Y. Supp. 647.

AGREEMENT, made this.....day of, one thousand nine hundred and....., BETWEEN..... hereinafter designated as the party of the first part, who.....and.....hereinafter designated as the party of the second part, who

WHEREAS, the party of the first part has this day..... the party of the second part..... a certain Indenture of Mortgage and the Bond which it secures, which Mortgage was made to.....by.....to secure.....Dollars, and interest, and is dated....., 19., and.....recorded in the office of the Register of the County of....., on....., 19., in Liber...., Section...of Mortgages, page....., and.....

WHEREAS, the ownership of the party of the second part in said Bond and Mortgage is to the extent of.....Dollars, with interest, and the party of the first part is now the owner of the balance of said mortgage debt.....but the ownership of the party of the second part is prior and superior to that of the party of the first part,

Now, THEREFORE, the parties hereto in consideration of the premises mutually certify and agree:

1. That the ownership of the party of the second part in said Bond and Mortgage is now..... Dollars, with interest thereon at the rate of..... per centum per annum from....., 19., payable from each in-

stalment of interest on said Bond and Mortgage, and that the party of the first part is now the owner of the balance of said Mortgage debt, but the ownership of the party of the second part is and shall be in every way prior and superior to that of the party of the first part, as if the party of the second part held a first mortgage for.....Dollars, and interest, and the party of the first part held..... a second and subordinate mortgage to secure the balance of the mortgage debt.

2. That the party of the second part is authorized to receive the instalments of interest due and to become due on the said Bond and Mortgage and to give proper receipts therefor, and after deducting from each instalment the amount thereof due under this agreement to the party of the second part, shall remit.....the balance to the party of the first part by mailing the same to the party of the first part at the address herein given.

3. That the party of the second part shall have all the rights of any holder of said Bond and Mortgage and is authorized to accept payment of said Bond and Mortgage and to execute a satisfaction piece therefor, and in the event of any default on said Bond and Mortgage to foreclose the same and receive the proceeds of sale from the Referee; but the party of the first part shall in any and every event have the right to an accounting for all money received by said party of the second part in excess of the ownership of the party of the second part in said Bond and Mortgage. All rights and authority given under this article by the party of the first part are irrevocable.

4. That the party of the second part is to notify the party of the first part of any and every default on said Bond and Mortgage and of any and every foreclosure by making the party of the first part a defendant in any and every suit without further notice or demand, but the party of the second part shall be under no other obligation to protect the interests of the party of the first part under any such suit or upon any sale under any such foreclosure.

5. That the interest of the party of the first part hereunder is not assignable. That the interest of the party of the second

part is assignable to any person or corporation without liability on the part of the party of the second part, if the assignment is made subject to this agreement.

6. That the party of the second part will sell to the party of the first part at any time after the.....day of, 19.., the interest of the party of the second part in said Bond and Mortgage, and will assign the said Bond and Mortgage to the party of the first part, upon being paid the amount of the share or interest of the party of the second part in said Bond and Mortgage, including principal and interest, at the time of such sale, provided such sale and assignment be requested in writing,.....days previous to the date on which they shall be required to be made.

7. That any notice or demand required by this agreement shall be given to the party of the first part by a notice sent through the registered mail and directed to the address of the party of the first part given herein.

8. That this agreement shall be binding upon and enure to the benefit of the respective legal representatives of the parties hereto and the assigns of said party of the second part.

Agreement Subordinating Mortgage.

Form prepared and used by Lawyers Title & Trust Company of New York.

THIS AGREEMENT, made the.....day of....., one thousand nine hundred and.....,

BETWEEN

..... hereinafter designated as the party of the first part,

..... hereinafter designated as the party of the second part, and

..... hereinafter designated as the party of the third part,

WITNESSETH:

WHEREAS, the party of the first part is the owner in fee of premises situated in the Borough of....., in the City of New York,..... and

WHEREAS,.....the owner....and holder....of a certain mortgage covering said premises, or a part thereof, as by reference to said mortgage will appear, and of the bond which said mortgage secures, said mortgage bearing date the.....day of....., 19.., being made by..... to..... to secure payment of the sum of.....Dollars, and interest, and recorded in the Office of the Register of the County of....., on the.....day of....., 19.., in Liber.....of Section.....of Mortgages, page....., and

WHEREAS, on condition that said mortgage be subordinated in the manner hereinafter appearing, the party of the third part is about.....mortgage covering said premises hereinabove described, bearing date the.....day of....., 19.., made by..... to..... to secure.....Dollars and interest.

Now, THEREFORE, in consideration of the premises and to induce the said party of the third part to..... and also in consideration of one dollar to each of them paid by the party of the third part, the receipt whereof is hereby acknowledged, the said parties of the first and second parts Do HEREBY, severally and respectively, covenant, consent and agree, to and with the said party of the third part, that said mortgage.....held by the party of the second part shall be, and the same.....hereby made subject and subordinate in lien to the lien of said mortgage for.....Dollars, and interest.....the party of the third part.

THIS AGREEMENT shall be binding upon and enure to the benefit of the respective heirs, legal representatives, successors and assigns of the parties hereto.

Building Loan Contract.

Form prepared and used by Lawyers Title & Trust Company of New York.

AGREEMENT, made this.....day of....., 19...,
 BETWEEN.....
 hereinafter referred to as the borrower, and.....
 hereinafter referred to as the lender.

WHEREAS, the borrower has applied to the lender for a loan of

 Dollars; to be evidenced by the bond of the borrower, duly
 executed and acknowledged for the payment on demand
 made after the.....day of....., 19..., of the said
 sum of.....Dollars, or so much thereof as
 shall at any time be advanced by the holder of the said bond,
 with interest upon each amount so advanced, from the day
 when such advance was made to the date of payment, at the
 rate of.....per centum per annum.

.....said bond to be secured
 by amortgage on the premises described as follows:

The borrower covenants to erect on said premises the following described building in accordance with the plans therefor filed in and duly approved by the Department of Buildings of the City of New York, and, if such building be affected by the Tenement House Law, the Tenement House Department of the City of New York. The said plans and the specifications for said building to be first submitted to and approved by the lender.

The building which the borrower covenants to erect shall be

 and shall cost not less than.....Dollars.

Now, THEREFORE, it is agreed between the parties as follows:

1. That said Mortgage is to be duly executed and acknowledged by all persons necessary to make it a valid..... lien on said premises for the advances to be made, and the said Bond and Mortgage are to be in form approved by the lender, and it is expressly understood and agreed, that allgas fixtures, bath tubs, dressers, wardrobes,

furnaces, ranges, mantels, grates and similar fixtures and articles, and each and every fixture and improvement, attached to or placed in the said building, to be used in connection therewith, shall form, part of the mortgaged premises, to be covered by and subject to the lien of the mortgage given to secure the advances herein provided for. The said Bond and Mortgage are to be delivered on the.....day of....., 19..., atM., at the office of LAWYERS TITLE AND TRUST COMPANY,....., Borough of....., City of New York.

2. That the lender may deduct from any payment to be made under this agreement any amount necessary for the payment of any expenses relating to the examination of the title to the said premises or incurred in the procuring and making of the said loan, or in the payment of any incumbrance, tax, assessment or other charge or lien upon the said premises existing at any time, whether before or after the making of said loan, and apply such amounts in making said payments, and all sums so applied shall be deemed advances under this agreement and secured by said Bond and Mortgage.

3. The advances to be made upon the said Mortgage, and to be secured by said premises and the buildings and improvements, including all fixtures, to be thereon erected, shall be as the lender shall determine, but substantially in accordance with the following schedule:.....

4. The lender may, at its option, upon the satisfactory completion of the said buildings, loan to the borrower a sum to be fixed by the lender, in addition to the amount herein agreed to be advanced as a building loan, which said additional sum, together with the amount of this building loan, shall then constitute a single loan upon said premises, to be secured by a mortgage, to be then executed and recorded, to run for such length of time and at such rate of interest as the lender may determine.

5. The lender agrees to make said loan and the borrower agrees to take said loan upon the terms and conditions above set forth, and also as follows:

I. That the borrower at the time fixed for the delivery of the Mortgage shall pay the charges for the examination of the title

to the said premises, surveys and drawing of papers, and shall also pay the recording fees.

II. That the fees paid to the lender for the making of this loan are in accordance with the number of payments and inspections to be made as per the foregoing schedule. If any additional payments or inspections are requested by the borrower, other than provided for in the foregoing schedule, a charge of: Dollars for each said inspection shall be made, as a payment for the additional inspection and continuation of searches, etc., but the lender is under no obligation to make any additional inspection or payment, and the making of same shall be entirely at the option of said lender.

III. That the lender may at any time release portions of the mortgaged premises upon receiving what, in the opinion of the lender, is a proper payment on account of the Mortgage debt.

IV. That the lender may require five days' notice in writing from the borrower before an advance shall be called for.

V. That no advance shall be due unless, in the judgment of the lender, all work usually done at the stage of construction when the advance is made payable be done in a good and workmanlike manner, and all material and fixtures usually furnished and installed at that time are furnished and installed, but the lender may advance parts or the whole of any instalments before they become due, if the lender believes it advisable so to do, and all such advances or payments shall be deemed to have been made in pursuance of this Agreement. A receipt for any advance may be made by any one of the parties constituting the borrower, if more than one person, with the same effect as if signed by all of such persons.

VI. That the lender may cause said loan to be made by some other person or corporation. That the Bond and Mortgage shall then run to said person or corporation. That the provisions of this Agreement shall apply to such Bond and Mortgage, and, if the loan be so made, it shall be deemed a compliance by the lender with this Agreement. That the lender may assign said Bond and Mortgage and cause the assignee to make any advances not made at the time of the assignment, and all the provisions of this Agreement shall continue to apply to said loan and Bond and Mortgage.

VII. That the lender or any holder of said Bond and Mortgage may extend the payment of the principal secured by said Bond and Mortgage, and any extension so granted shall be deemed made in pursuance of this Agreement and not to be a modification thereof.

VIII. That the lender or any holder of said Bond and Mortgage may employ a watchman to protect the buildings from depredation or injury, and the expense of so doing shall be deemed an advance to the lender, and secured by said Bond and Mortgage.

IX. That if the construction of said buildings be at any time discontinued or not carried on with reasonable despatch in the judgment of the lender, said lender or any holder of said Bond and Mortgage may purchase materials and employ workmen to protect said buildings so that the same will not suffer from depredation or the weather, or to complete said buildings, so that they may be used for the purposes for which they are designed, under the said plans and specifications.

X. That all the sums so paid or expended shall be deemed advances to the borrower and secured by said Bond and Mortgage, and may be applied, at the option of said lender or any holder of said Bond and Mortgage, to any advances thereafter becoming due.

XI. That in the event of the death of the borrower while still holding title to the premises hereinbefore described, the lender will, in case the work upon the said buildings is continued as provided in this agreement, continue to make advances under this agreement and subject to all its terms and conditions to the borrower's Executors or Administrators; and all sums so advanced by the lender shall be deemed advances under this agreement, as if made to the borrower in his lifetime, and shall be secured by said Bond and Mortgage.

XII. That in the event of the borrower's parting with or being in any way, except by death, deprived of his title to the premises described in this agreement, the lender may at its option continue to make advances under this agreement, and subject to all its terms and conditions, to such person or persons or corporations as may succeed to the borrower's title; and all sums so advanced by the lender shall be deemed advances

under this agreement, and shall be secured by said Bond and Mortgage.

6. The borrower covenants and agrees not to do any act or thing prohibited by the terms of this Agreement, and it is expressly agreed that in any of the following events all obligations on the part of the lender to make said loan or to make any further advance shall, if the lender so elect, cease and terminate, and the said Bond and Mortgage shall at the option of the holder thereof become immediately due and payable, but the lender may make advances without becoming liable to make any other advances.

I. If the Mortgage offered by the borrower shall not give to the lender a lien for the indebtedness to be secured thereby on the premises above set forth, satisfactory to the attorney of the lender.

II. If the loan is to be advanced in more than one payment, and any payment be requested, and the attorney of the lender shall not approve of the payment requested because of some act, incumbrance or question arising after the making of the preceding payment.

III. If the borrower assigns this contract or said advances or any interest therein, or if said premises be conveyed or incumbered in any way without the consent of the lender.

IV. If the improvements on said premises or any building which may be erected upon said premises shall materially encroach upon the street or upon adjoining property.

V. If the borrower does not take the loan or the advances within thirty days after they are made payable, or in case where the payment of advances is dependent upon the erection of a building, the building be not fully enclosed within months from date, or fully completed and ready for occupancy within months from date.

VI. If the improvements on said premises be, in the judgment of the lender, materially injured or destroyed by fire or otherwise.

VII. If the makers of said Bond and Mortgage shall fail to comply with any of the covenants therein contained.

VIII. If any materials, fixtures or articles used in the construction of the building or appurtenant thereto, be not pur-

chased so that the ownership thereof will vest in the owner of the said premises free from incumbrance, on delivery at the premises.

IX. If the borrower do not erect said building in accordance with plans and specifications satisfactory to the lender and plans that have been approved by the Department of Buildings of the City of New York, and, if said building be affected by the Tenement House Law, by the Tenement House Department of the City of New York.

X. If the owners of said premises do not permit the lender, or a representative of the lender, to enter upon said premises and inspect the building thereon at all reasonable times.

XI. If the construction of said building be at any time discontinued or not carried on with reasonable despatch in the judgment of the lender.

XII. If, by reason of the death of any owner of said premises, the heirs, devisees or legal representatives of such owner shall permit or allow said construction of the building to be discontinued for a period of thirty days.

XIII. If the borrower make any conditional purchases of, or execute any chattel mortgage on any materials, fixtures or articles used in the construction of the building or appurtenant thereto.

XIV. If the borrower fail to comply with any requirement of any Department of the City of New York, within thirty days after notice in writing of such requirement shall have been given to said borrower by the lender.

7. And it is mutually understood and agreed by and between the parties hereto on behalf of themselves and their respective legal representatives that the Bond and Mortgage contemplated to be executed, acknowledged and delivered pursuant to this Agreement shall be made subject to all the conditions, stipulations, agreements and covenants contained in such Agreement, to the same extent and effect as they would be if fully set forth and made part of such Bond and Mortgage: and it is further expressly understood and agreed that, if the borrower fail to keep, observe or perform any of the stipulations or covenants contained in said Bond and Mortgage, or in this Agreement, that, at the option of the holder of said Bond and Mort-

gage, the amount secured thereby shall become at once due and payable, anything to the contrary notwithstanding.

Agreement Extending Time for Payment of Mortgage.

Form prepared and used by Lawyers Title & Trust Company of New York.

Williston, Sections 122, 593-595, 1190, 1222-1230.

AGREEMENT, made the.....day of.....
 nineteen hundred and.....

BETWEEN
 hereinafter designated as the party of the first part, and

 hereinafter designated as the party of the second part:

WITNESSETH, that the party of the first part, the holder of a certain bond conditioned for the payment of.....
Dollars made by.....
 dated the.....day of.....nineteen
 hundred and....., and which is.....due,
 which bond is secured by a mortgage recorded in the office of the Register of the County of....., in Liber.....
of Mortgages, page....., and which mortgage is now a.....lien upon the premises situate in the Borough of.....of the City of New York.....
 on which bond and mortgage there is now owing the sum of
Dollars, with interest at the rate of
per centum per annum, from the.....
 day of....., nineteen hundred and.....
 in consideration of one dollar paid by the party of the second part, and other valuable consideration, the receipt whereof is hereby acknowledged, does hereby extend the time of payment of the principal indebtedness secured by said bond and mortgage to the.....day of.....nineteen hundred and.....

PROVIDED, the party of the second part meanwhile pays interest on the amount owing on the said bond and mortgage at the rate of.....per centum per annum, from the
day of.....nineteen hundred and.....

semi-annually on the.....days of.....and
....., in each year, and also complies with all the
terms of said bond and mortgage as hereby modified;

AND the party of the second part, in consideration of the above extension and of one dollar paid by said party of the first part and other valuable consideration, the receipt whereof is hereby acknowledged, does hereby covenant and agree to pay said principal sum and interest as above set forth and not before the maturity thereof as the same is hereby extended, and to comply with the other terms of said bond and mortgage.

And the party of the second part further covenants with the party of the first part as follows:

1. That the party of the second part will pay the indebtedness as hereinbefore provided.

2. That the party of the second part will keep the buildings on the premises insured against loss by fire for the benefit of the party of the first part.

3. That no building on the premises shall be removed or demolished without the consent of the party of the first part.

4. That the whole of said principal sum shall become due after default in the payment of any instalment of principal or of interest for thirty days, or after default in the payment of any tax, water rate or assessment for sixty days after notice and demand.

5. That the holder of said mortgage, in any action to foreclose it shall be entitled to the appointment of a receiver.

6. That the party of the second part will pay all taxes, assessments or water rates, and in default thereof, the party of the first part may pay the same.

7. That the party of the second part within six days upon request in person or within thirty days upon request by mail will furnish a statement of the amount due on said mortgage.

8. That notice and demand or request may be in writing and may be served in person or by mail.

9. That the party of the second part warrants the title to the premises.

10. That the whole of said principal sum shall become due at the option of the party of the first part after default for sixty days after notice and demand, in the payment of any instal-

ment of any assessment for local improvements heretofore or hereafter laid, which is or may become payable in annual instalments and which has affected, now affects or hereafter may affect the said premises, notwithstanding that such instalment be not due and payable at the time of such notice and demand.

11. That the whole of said principal sum shall become due at the option of the party of the first part, if the buildings on said premises are not maintained in reasonably good repair or upon the failure of any owner of said premises to comply with the requirement of any department of the State or City of New York, within three months after an order making such requirement has been issued by any said State or City Department.

12. In the event of the passage after the date of said mortgage of any law of the State of New York, deducting from the value of land for the purposes of taxation any lien thereon, or changing in any way the laws for the taxation of mortgages or debts secured by mortgage for state or local purposes, or the manner of the collection of any such taxes, so as to affect said mortgage, the holder of said mortgage and of the debt which it secures, shall have the right to give thirty days' written notice to the owner of the mortgaged premises requiring the payment of the mortgage debt. If such notice be given the said debt shall become due, payable and collectible at the expiration of said thirty days.

13. That in case of a sale, said premises, or so much thereof as may be affected by said mortgage, may be sold in one parcel.

14. That the whole of said principal sum shall immediately become due at the option of the party of the first part, if the party of the second part shall assign the rents or any part of the rents of the mortgaged premises without first obtaining the written consent of the party of the first part to such assignment, or upon the actual or threatened demolition or removal of any building erected or to be erected upon said premises.

15. That the whole of said principal sum shall immediately become due at the option of the party of the first part upon any default in keeping the buildings on said premises insured against loss by fire as required by paragraph No. 2 above, or if

after application by any holder of said mortgage to two or more fire insurance companies lawfully doing business in the State of New York and issuing policies of fire insurance upon buildings situate in the place where the mortgaged premises are situate, the companies to which such application has been made shall refuse to issue such policies.

16. That the holder of said mortgage in any action to foreclose it, shall be entitled (without notice and without regard to the adequacy of any security for the debt) to the appointment of a Receiver of the rents and profits of said premises.

17. That the party of the second part is now the owner and holder of the premises upon which said mortgage is a validlien for the sum of.....Dollars principal, with interest thereon at the rate of..... per centum per annum, payable as above set forth, and that there are no defenses or offsets to said mortgage or to the debt which it secures.

18. That in the event of any default in paying said principal or interest, the rents and profits of the mortgaged premises are hereby assigned to the holder of said mortgage as further security for the payment of said indebtedness.

19. And the party of the second part further covenants that the principal and interest hereby agreed to be paid shall be a lien on the mortgaged premises and be secured by said bond and mortgage, and that when the terms and provisions contained in said bond and mortgage in any way conflict with the terms and provisions contained in this agreement, the terms and provisions herein contained shall prevail, and that as modified by this agreement the said bond and mortgage is hereby ratified and confirmed.

This agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto.

Collateral Bond to Secure Payment of Mortgage

Form prepared and used by Lawyers Title & Trust Company of New York.

KNOW ALL MEN BY THESE PRESENTS, That.....
hereinafter designated as the obligor,.....held and firmly bound unto.....
hereinafter designated as the obligee, in the sum of.....Dollars, lawful money of the United States of America, to be paid to the said obligee,.....
 or assigns: FOR WHICH PAYMENT, well and truly to be made,do.....bind.....firmly by these presents. SEALED with.....seal...., dated the.....
 day of.....one thousand nine hundred and.....
 WHEREAS,.....
 ha executed and delivered to.....
 certain bond or obligation, dated the.....day of
, 19.., conditioned for the payment of the sum of.....Dollars, on the.....
 day of....., one thousand nine hundred and
, with interest thereon, to be computed from the
day of....., 19.., at and after the rate of.....per centum per annum, and to be paid semi-annually on the.....days of.....and
which said bond is secured by a certain mortgage, made by.....
 to said obligee named in said bond, bearing even date with said bond, and.....recorded in the office of the Register of the County of.....on the.....day of
, 19.., in Liber.....of Section.....of mortgages, page....., and covering certain premises, fully described in said mortgage, situate in the Borough of.....
in the City of New York.

WHEREAS, to induce the said obligee to.....
 the said obligor hath agreed to make, execute and deliver this bond as further and additional security for the payment of the said above-mentioned bond and mortgage

NOW THEREFORE THE CONDITION OF THIS OBLIGATION IS SUCH, that if the parties bound to pay the moneys secured by said bond and mortgage, or the above-bounden obligor,shall well and truly pay, or cause to be paid, to the said obligee,
or assigns, the just and full sum of
 Dollars, together with all interest thereon, as the same shall become due and payable according to the terms and conditions of the aforesaid bond and mortgagee.....; and if the said obligor,.....shall, at all times hereafter, hold, indemnify and save harmless the said obligee,.....
and assigns, from and against all loss, damages costs, expenses, suits, actions, claims and demands whatsoever, which.....or they may or might otherwise, at any time hereafter, sustain, suffer, be liable to or obliged to pay under or by reason of any default in any of the terms, provisions, covenants, or conditions of the aforesaid bond and mortgage , then this obligation to be void, otherwise to remain in full force and virtue.

SEPARATION AGREEMENTS

Williston, Sections 355n., 781n., 841n., 1472n., 1742-1744.
Johnson *v.* Johnson, 206 N. Y. 561, 100 N. E. 408;
Winter *v.* Winter, 191 N. Y. 462, 84 N. E. 382;
Spense *v.* Woods, 134 App. Div. 182, 000 N. Y. Supp. 807;
Landes *v.* Landes, 170 App. Div. 898, 154 N. Y. Supp. 1129;
Reardon *v.* Woerner, 111 App. Div. 259, 97 N. Y. Supp. 747;
Effray *v.* Effray, 110 App. Div. 545, 97 N. Y. Supp. 286;
Barnes *v.* Klug, 129 App. Div. 192, 113 N. Y. Supp. 325;
Carling *v.* Carling, 42 Misc. 492, 86 N. Y. Supp. 46.

General Form

AGREEMENT made between.....
hereinafter called the "Husband" and.....
hereinafter called the "Wife," WITNESSETH:

WHEREAS, as a result of differences and disagreements, the parties on or about..... separated and since that time have been living separate and apart and are of the opinion that it is to their advantage and welfare to live separate and apart in the future; and

WHEREAS, the Husband desires to make provision for the maintenance and support of the Wife during her life.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein, the parties agree:

1. The parties shall live separate and apart and each be free from interference, authority and control by the other as fully as if he or she were sole and unmarried, and each may conduct, carry on and engage in any employment, business or trade which to him or her shall seem advisable for his or her own, sole or separate use and benefit without and free from any control, restraint or interference, direct or indirect, by the other party in all respects as if each were unmarried.

2. The parties agree that they will not molest the other or compel or seek to compel the other party to cohabit or dwell with him or her by any proceedings for restoration of conjugal rights, or otherwise.

3. The Husband agrees that the Wife shall own, have and en-

joy, independently of any claim or right of the Husband, all silverware, pictures, portraits, books, household furniture, china, glassware, rugs and other household effects of every kind and description and wheresoever situated, now owned or held by the parties, or either of them, and also all wearing apparel, personal ornaments and other personal property belonging to the wife and now in her possession, or held by her, or which shall hereafter belong or come to her, and these shall remain her sole and separate property, free and discharged from all rights of the Husband, with full power to the wife to sell, assign, convey, deal with, bequeath or dispose of any of the property mentioned in this paragraph during her lifetime, or by her last will and testament, as fully and effectually in all respects as if she were sole and unmarried. The Husband agrees that he will, from time to time, execute and deliver such further instruments, and do such further acts as may be necessary to carry out and make effectual the provisions of this paragraph of this agreement.

4. The Husband will, during the joint lives of the Husband and the Wife, pay to the Wife for her separate maintenance and support, and for her separate use and benefit, \$. The Husband covenants and agrees to pay any and all charges, taxes or assessments charged against or levied or assessed against the said payments, or against the Wife on account thereof by any present or future law, regulation or act of the United States, or of any State, Territory, Municipality or other taxing authority whatsoever; it being the intention of the parties that the Husband shall pay and the Wife shall receive, without diminution for any reason whatever, the full amount of said payments for the Wife's maintenance and support.

5. The Husband will pay as and when the same shall become due and payable all bills or debts contracted by the Wife prior to, whether contracted in her own name or in that of the Husband, including bills for medical attention and services, the said payments to be made directly to the various creditors by the Husband, or, at his election, to the Wife who will thereupon immediately proceed to pay said bills or debts.

6. The Wife agrees that so long as the Husband shall perform

each and every of the covenants and conditions hereof on his part to be performed and observed, she will not at any time hereafter contract any debt, or debts, charge or liability for which the Husband or his estate shall or may be or become liable or answerable.

7. The Husband represents that he has heretofore insured his life for by certain policies of life insurance which are enumerated in Schedule "A" hereto annexed and made a part hereof. The Husband, in order to provide for the separate support and maintenance of the said Wife after his death, has caused the said policies of insurance to be irrevocably assigned to the Wife during her natural life, and has delivered said policies to the Wife. The Husband covenants and agrees that he will, at all times, hereafter maintain said insurance in full force and effect in favor of the Wife; that he will promptly and punctually pay the premiums thereon as and when they and it shall severally become due and payable.

8. The Wife covenants and agrees that she will release her right of dower in any land or real estate of which the Husband may hereafter be seized or possessed, and that she will execute, acknowledge and deliver at the request of the Husband or his legal representatives, without cost or expense to her, all such deeds, releases or other instruments as may be necessary to bar, release or extinguish such right of dower.

Except as herein provided, the Wife hereby releases all of her interest in or her right or claim to the separate estate of the Husband.

9. The Wife covenants and agrees that she, her executors and administrators, will at all times hereafter keep the Husband, his heirs, executors and administrators, indemnified from all debts and liabilities hereafter contracted or incurred by the Wife from all actions, proceedings, claims, demands, costs and expenses whatsoever in respect thereto, if and as long as the Husband shall fully and faithfully perform and observe each and every of the covenants and conditions hereof, on his part to be performed and observed, and in the event the Husband shall be compelled to pay any sum or sums of money for or on account of any debt or liability hereafter contracted or incurred by the Wife then and in every such case the Husband may at

his option deduct and retain from the monthly payments hereinabove provided for the amount which he shall have so been compelled to pay together with all costs and expenses, provided, nevertheless, he shall not be in default hereunder.

10. The parties hereto covenant and consent that in the event a temporary or final judgment or decree shall be rendered in any action or proceeding between the parties hereto in which provision for the maintenance and support of the Wife may be appropriate such judgment or decree shall provide for the maintenance and support of the Wife according to the terms of this agreement, and this agreement shall be embodied in and made a part of such judgment or decree. This agreement shall nevertheless continue in full force and effect, but the Wife in no event shall be entitled to an allowance greater than that herein provided for.

11. The foregoing contains the entire agreement between the parties, and there are no other understandings or agreements between them.

Separation Agreement—Provision for Reduction of Payments in Proportion to Reduced Income of Husband

AGREEMENT made between hereinafter referred to as the Husband, and, hereinafter referred to as the Wife, WITNESSETH:

WHEREAS, the parties hereto are Husband and Wife, and because of irreconcilable disputes and differences which have arisen between them, have heretofore separated and have been and are living separate and apart, and

WHEREAS, differences have arisen between the parties with respect to their rights and privileges and with respect to the amounts which the Husband shall contribute to the support of the Wife, and

WHEREAS, the Husband represents and warrants, as the basis upon which this agreement is made, and for the purpose of inducing the Wife to sign this agreement, that his total income from all sources amounts to not more than the sum of \$ per year.

WHEREAS, the Wife, relying upon this information is willing

that her right to support from the Husband should be made upon this statement of the facts by the Husband,

NOW, THEREFORE, IN CONSIDERATION of the premises and of the mutual promises of the parties, IT IS AGREED AS FOLLOWS:

1. Each of the parties agree not to interfere or intermeddle with the other in his or her respective liberty, conduct or action.

2. Each of the parties agrees that the other may at any and all times live separate and apart and may reside and be in such places and in such families and with such relations, friends and acquaintances and may follow and carry on such business, occupation or profession as he or she may choose, and in general, that the parties are to have full and independent liberty and freedom of action and conduct, so far as their mutual obligations, duties and responsibilities are involved.

3. The Husband agrees to pay to the Wife, \$. upon the first day of each and every month during her life. The Wife agrees to accept said payment, if and when and so long as made, in full satisfaction of her claim for support and maintenance by the Husband. If the Husband's income from all sources of whatsoever nature, should for three successive months, average pro rata for the current calendar year less than \$. and more than \$. than the amount which the Husband shall be obliged to pay thereafter and the amount which the Wife shall thereafter accept in lieu of maintenance and support from the Husband as herein provided, shall instead of \$. per month, be. per centum of such amount as the Husband's current calendar monthly income may be. This contingency is hereinafter described as the "first contingency." If the Husband's income from all sources of whatsoever nature should, for three successive months, average pro rata, for the current calendar year \$. or less, than the amount which the Husband shall be obliged to pay thereafter, and the amount which the Wife will thereafter accept, in lieu of maintenance and support from the Husband as herein provided, shall be per month instead of. per centum of such amount as the Husband's current calendar monthly income may be, one-third of said amount. This contingency is hereafter described as the "second contingency." As a condition precedent to any reduction in either contingency above pro-

vided for, the Husband shall submit a sworn statement of his current income. The said reduction shall continue in the event of the first contingency, only so long as the Husband's current income shall be per month less than% of \$....., and in the event of the second contingency, only so long as the Husband's current income shall be per month.....% of \$.....or less. Such respective reductions shall cease at any time when his current income during any month shall be in the first contingency.....% of \$..... If at any time during any year, the Husband shall avail himself of either of the reductions herein provided for, then upon January first of the ensuing year, the Husband shall submit to the Wife a sworn statement of his total income in the previous year showing his income for each month of that year.

In the event of any breach of the terms of this paragraph or agreement requiring the furnishing of sworn statements as to the Husband's income, or in the event of any misstatement or false representation by the Husband as to his income, the sum of \$.....for each and every month shall be due and payable, irrespective of the actual income of the Husband or whether reduced payments have been made and accepted, and the Wife shall be entitled to the difference between the amount paid and accepted and the said \$.....per month.

4. The payments and statements hereby required shall be made and be due commencing as of.....

5. Payments required hereunder shall be made to the Wife at.....or to.....her attorney at....., or to any other attorney or agent for the Wife, whom she may hereafter appoint by written notice.

6. The Wife agrees not to incur any liabilities or incur any debts in the name of the Husband as long as he shall faithfully perform all the provisions of this agreement.

Separation Agreement—Trustee—Common Law Form

AGREEMENT made.....between.....hereinafter described as the "Husband" and.....his wife, hereinafter described as the "Wife," and.....Trustee of said Wife, hereinafter described as the Trustee, WITNESSETH:

WHEREAS disputes and unhappy differences have arisen between the Husband and Wife, for which reason they have been living separate and apart from each other.

Now, THEREFORE, in consideration of the premises, the parties hereby covenant and agree, as follows:

1. It shall be lawful for them at all times hereafter to live separate and apart from each other and each of them agree to permit the other to reside and be in such place and places and in such family and families and with such relative, friends and other persons and to follow and carry on any trade or business or occupation. Neither shall, nor will, at any time, sue or suffer the other to be sued for living separate and apart from each other, or compel the other to live with him or her, nor sue, molest, disturb or trouble any other persons whomsoever for receiving, entertaining or harboring the other and neither will, without consent visit the other, nor knowingly enter any house or place where the other shall dwell, reside or be, or send or cause to be sent any letters or messages to the other, nor shall or will, at any time hereafter, claim or demand any of the money, jewels, plate, clothing, household goods, furniture or stock in trade, which the other shall, or may, at any time hereafter have in his or her power, custody or possession, buy or procure or which shall be devised or given to him or her, or that he or she may otherwise acquire. Each shall and may enjoy and absolutely dispose of the same as if they were single and unmarried.

2. The Husband agrees that the Wife shall have the custody and control of their and that he will not attempt to compel said to live with him or to alienate from his said Wife in any manner by word or act.

3. The Husband agrees that from and after, he will pay or cause to be paid for from the date hereof, for and toward the better support and maintenance of his said Wife and of said child, \$, weekly. Said payments to be made to The Wife agrees to accept said payments in full satisfaction for her support and maintenance.

4. The Wife agrees that she will permit the Husband to visit the said at a place to be designated by her and apart from the house or place where she may reside or be;

this contract to be void in the event of the wilful refusal of the Wife to permit the Husband to visit and see said.....as aforesaid.

5. The Trustee, in consideration of the sum of One dollar to him duly paid, covenants and agrees to and with the Husband, to indemnify and bear him harmless of and from all debts of his said Wife, contracted, or that may hereafter be contracted by her, or on her account; and if the said Husband shall be compelled to pay any sum debt or debts, the said Trustee hereby agrees to repay the same, on demand, to the said Husband, with all damage and loss that he may sustain thereby.

Separation Agreement with Provision for Support of Children; Insurance of Life for Benefit of Wife and Children; Lease of Apartment by Husband for Use of Wife and Children

Stoddard v. Stoddard, 227 N. Y. 13; 124 N. E. 91.

AGREEMENT made.....between....., hereinafter referred to as the Husband, and....., hereinafter refined to as the Wife.

WHEREAS the parties married on or about and there has been issue of such marriage, to wit: born, and

WHEREAS in consequence of disputes and unhappy differences the parties have separated and now are, and for have been, living apart, and since their said separation have agreed to live separate and apart during their natural lives.

Now, therefore, it is agreed that in consideration of the mutual promises, agreements and covenants contained herein it is

Covenanted, promised and agreed by each party hereto, to and with the other party hereto, as follows:

1. It shall be lawful for the Wife, at all times hereafter to live separate and apart from the Husband and free from his marital control and authority, as if she were sole and unmarried, and free from any control, restraint or interference, direct or indirect, by the Husband; and it shall be lawful for the Husband at all times hereafter to live separate and apart from the Wife,

at such place or places as he may from time to time choose or deem fit.

2. Neither of the parties shall molest or annoy the other, or compel or endeavor to compel the other to cohabit or dwell with him or her, by any legal or other proceedings, for restoration of conjugal rights or otherwise. Neither party hereto shall call upon or visit the other, but this agreement shall not preclude the Husband from calling at any abode of the Wife for the purpose of seeing and visiting the children.

Neither party shall communicate orally, either in person or by telephone, with the other party, without the previous express consent of such other party except concerning a serious illness of some member of the family.

4. The Husband shall, during the joint lives of himself and the Wife, so long as this agreement shall continue, pay to the Wife, for her support and maintenance, use and benefit, \$. each month, to be paid on or before the day of each month after the execution of this agreement. This payment shall continue so long as the Wife shall continue to observe and fulfill the provisions of this agreement, and shall remain the Wife of the Husband. The said amount shall be paid to her in addition to the payments hereinafter provided for to be made to her in consideration of her undertaking the support and maintenance of the children hereinabove named.

5. The Wife shall have the custody and control of the said children and of their education until they respectively attain the age of (and thereafter if no objection hereto be made by the Husband), without any interference whatever on the part of the Husband, and so long as Wife shall have custody of the children or of either of them, the Husband will pay to her in consideration of her undertaking the support and maintenance of the children \$ each for each of the children so in the custody of the Wife, which said payment shall be made on or before the day of each after the execution of this agreement, and shall be in addition to the payment hereinabove provided to be made for the use and benefit of the Wife. The Wife agrees that she will, so long as she receives the payments provided for in this paragraph properly maintain,

care for and educate the child or children in respect of whom said payment shall have been so made, but subject only to this agreement, she may expend the said payments in accordance with her uncontrolled discretion. The Wife will not remove or suffer to be removed the children or either of them more than miles from without the consent of the Husband, and she will at all times afford reasonable opportunity to the Husband to visit the children, alone. After the children respectively attain the age of fourteen (14) years, they shall be at liberty to reside with either of the parties at their election. Neither of the parties shall attempt to influence either of the children unfavorably to the other party.

6. In no case or event shall the Wife or either of the Children or any representative or any of them, have any right or power to anticipate any payment or payments herein agreed to be made, or to assign or incur in any way any rights or interests which either of them have or may have by reason of this agreement.

7. The Wife does and shall accept the provisions herein made for her in full satisfaction for her support and maintenance, and for the support and maintenance during the time herein provided for of the children, and she hereby covenants and agrees that so long as the Husband shall duly keep and perform the covenants, agreements and conditions to be kept and performed by him hereunder, she will not, at any time hereafter, contract any debts, charge or liability, whatsoever, for which the Husband or his property or estate shall or may be or become liable or answerable, and the Wife hereby covenants and agrees that she will at all times hereafter, so long as the Husband shall make the payments herein provided for, keep the Husband free and harmless from any and all debts or liabilities which may hereafter be incurred by the Wife.

8. In case the Husband shall, at any time or times hereafter, be called upon to pay or discharge, and shall in fact pay or discharge, any debt or liability heretofore or hereafter incurred, or contracted by the Wife, other than those toward the payment of which he is to contribute as provided in paragraph "13" hereof, then and in every such case it shall be lawful, for, and the right hereunder of, the Husband at his election, to deduct

and retain the amount which he shall have so paid out of the sum or sums of money then due or thereafter to become due to the Wife. The Husband shall, however, pay no debt or liability without first notifying the Wife of the existence of, and giving her an opportunity to pay the same.

9. The Wife will, at any time, upon request of the Husband, join with him in the execution of any contract of sale of and deed of any real property now or at any time hereafter owned by him provided that, as to any real property now owned by him, he will at the time of the receipt in cash of the consideration therefor (or if such consideration be other than cash, then at the time that the same be converted into cash) pay to the Wife that percentage hereof which is the percentage value of an inchoate right of dower at the respective ages of the parties at the date of the delivery of the deed, such percentage value to be taken from the five per cent. table of or

10. The Husband shall cause a policy of life insurance on his life in the amount of \$. to be issued or transferred to the Wife and in her name, and he shall pay the annual premiums thereon during his life or until such time prior to his death when the said policy shall have become a policy with all premiums thereon fully paid up. He shall cause two similar policies, each in the amount of \$. to be issued, one of which shall be for the benefit of each of the children above named. In the event that the Wife shall become divorced from the Husband and shall marry another person during the lifetime of the Husband, or in the event that she shall die during the lifetime of the Husband, her interest in the said insurance policy of which she is the beneficiary shall revert to the estate of the Husband. Each of the said policies of insurance for the benefit of the said children shall provide that in the event of the death of the beneficiary thereunder prior to the death of the Husband such insurance shall be paid to the survivor of said children.

11. The parties shall, at any time or times hereafter, make, execute and deliver any and all such further or other instruments, papers or things as the other of said parties shall require for the purpose of giving full effect to these presents and to the covenants, provisions and agreements hereof.

12. In the event that the Husband shall fail to keep any of the promises or agreements herein contained, the Wife shall have the right at her option either to bring an action for damages for the breach of this contract or to bring an action against the Husband for a legal separation, or for support and maintenance, and nothing herein contained shall in such event in any way, affect, abrogate, or militate against the right of the Wife under such circumstances to bring any action for separation or for the restoration of conjugal rights or for support and maintenance against the Husband.

13. In order to provide for the immediate needs and comforts of the Wife, to furnish her with a home for her present occupancy, to reimburse her for certain disbursements heretofore made by her and to provide for defraying certain obligations heretofore incurred by her, the Husband agrees:

a. That he will lease to the Wife the premises (.) by a lease to be signed contemporaneously with this agreement and upon the terms and conditions therein expressed, it being, however, understood that the Husband shall have the right to collect and to be paid the monthly rental of \$. therein provided for by deducting and retaining the same from the \$. which he is by this agreement obligated to pay monthly to the Wife.

b. The Husband assumes and will pay certain bills aggregating \$. heretofore contracted by the Wife a list whereof is hereto attached.

c. When the Wife shall have vacated and removed from the premises and shall have taken all her chattels therefrom the Husband will pay her the sum of \$. to reimburse her in part for the expenses of packing and moving, provided that at the time of such removal she causes such property of his as shall then be in the said premises to be at her expense delivered to him or to his order at such place in as he may then designate.

d. When the Wife shall vacate the said premises the Husband will, if the Wife so desires, purchase from her at their then actual value any chandeliers, gas logs, curtain fixtures and gas water heating appliances belonging to her which then may be therein.

e. The Husband will pay one-third of the expense not to exceed \$..... of a treatment for changing the configuration of the jaw and teeth, which treatment the said..... is now undergoing, and will pay the same when the obligation to pay for the first one-third of such treatment shall accrue.

f. The Husband will provide her with funds not, however, to exceed \$..... with which to pay her present obligation to her former attorney,.....and with funds not, however, to exceed \$.....with which to pay her present obligation to her present attorneys....., which funds she shall use for the purpose for which they are so provided.

Separation Agreement.

AGREEMENT made, hereinafter referred to as the Husband, and, hereinafter referred to as the Wife, WITNESSETH:

WHEREAS, the parties are husband and wife and irreconcilable disputes and difference having arisen between them they have heretofore separated and been living separate and apart; and

WHEREAS, difference have arisen between the parties with respect to their rights, privileges, personal liberty and obligations and conduct with respect to one another and to other persons; and

WHEREAS, the parties hereto are desirous of reaching an agreement on these points,

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises, concessions and agreements herein, it is agreed as follows:

1. Neither of the parties will interfere or intermeddle with the other in his or her respective liberty, conduct or action.

2. Each party agrees that the other may at any and all times live separate and apart and may reside and be in such places and in such families and with such relations, friends and acquaintances and may follow and carry on such business, occupation or profession as he or she may choose and in general that the

parties hereto are to have full and independent liberty and freedom of action and conduct so far as their mutual obligations, duties and responsibilities are involved.

3. The husband agrees that he will pay or cause to be paid or make provisions for the payment to the Wife of dollars then first day of each and every month during the term of her natural life or until she shall marry and the Wife agrees to accept such payment if, when and so long as made in full satisfaction of her claim for support and maintenance under this agreement

4. The Husband shall have sole charge and custody of , the child of the parties. As to , the child of the Wife, who has heretofore been adopted by the Husband pursuant to the statute in such case made and provided, for the present and until otherwise requested by the Wife, the Husband shall have the custody without prejudice to the right of the Wife to said child under the provisions of Section 114 of the Domestic Relations Law of the State of New York. The relinquishment by the Wife of the custody of the child shall not be deemed to give the Husband any authority to consent to the adoption of the said child by others or to appoint in case of his death any guardian for such child to the exclusion of the Wife. The Wife shall have the privilege of seeing wherever the child may be for a period of in each and

5. The Husband agrees that he will immediately notify the Wife of any serious illness or accident to either of the children while in his care.

6. The Wife agrees not to incur any liabilities or incur any debts in the name of the husband.

Separation Agreement after Commencement of Action

AGREEMENT made , between , hereinafter referred to as the Husband, and of , hereinafter referred to as the Wife.

WHEREAS the parties hereto are husband and wife and are and have been living separate and apart since , and,

WHEREAS an action has been instituted in the Court, County, by as plaintiff against as defendant for, and is now pending, and ,

WHEREAS numerous disputes and differences have arisen between the parties by reason of which they have consented and agreed and do hereby consent and agree to continue to live separate and apart from each other. Now in consideration of the payments to be made as hereinafter stated by the Husband to the Wife it is agreed:

1. Neither of the parties will interfere with the rights, privileges, lawful doings or actions of the other and they will not interfere in any manner, or shape with one another .

2. Each of the parties is at liberty to lawfully act and do as they see fit.

3. The Husband agrees that it shall and may be lawful for the Wife at all times hereafter to live separate and apart from the Husband and he will permit her to reside and be in such places, and in such families, and with such relations, friends and other persons, and to follow and carry on such trade or business as she may choose or see fit, and that he will not at any time sue, or suffer her to be sued, for living separate and apart from him, nor sue, molest, disturb or trouble any other person whomsoever, for receiving, entertaining or harboring her; and he will not without her consent visit her or knowingly enter any house or place where she shall dwell, reside, or be, or send, or cause to be sent, any letter or message to her; nor will he at any time hereafter, claim or demand any of her money, jewels, plate, clothing, household goods, furniture which she now has in her possession or which she shall or may at any time hereafter have, buy or procure, or which shall be devised or given to her, or that she may otherwise acquire, and that she shall and may enjoy and absolutely dispose of the same as if she were a femme sole and unmarried; and further

The Husband shall and will pay to the Wife dollars (\$.) each and every during the term of her natural life or until she shall lawfully be married to another in full satisfaction for her support and maintenance, and in full satisfaction for the support, maintenance and education of, the of the parties

....., said payments to be made on of each and every and to be sent to the Wife by post office money order at her address number until she shall notify the party of the first part of a change in address, and thereafter from time to time, at such address as the Wife shall give to the Husband.

5. IT IS AGREED that the Husband shall have the privilege of seeing the said at the residence of the Wife.

Separation Agreement—Clause for Adjusting Payments with Income

Hoffstaedter v. Hoffstaedter, 188 N. Y. Supp. 251; *Stoddard v. Stoddard*, 227 N. Y. 13, 124 N. E. 91.

“The husband agrees to pay to the wife, during the joint lives of himself and his wife, and as long as the marriage between them shall not be dissolved by a decree of a court of competent jurisdiction, subject, however, to any limitations hereinafter provided, dollars per for the use, benefit, support, and maintenance of the wife. The payment shall be coincident with the signing of this agreement, or within days thereafter, and subsequent payments shall be on thereafter. In the event the annual income of the husband should at any time hereafter be at the rate of less than dollars per annum, the payments to be made by the husband shall in no event exceed per cent of the annual income of the husband, and shall continue at the reduced sum until such time as the husband’s annual income shall again be at the rate of dollars or more per annum.”

MISCELLANEOUS CLAUSES

Clauses Relieving from Performance for Various Causes

Williston—Section 1968; also Sections 1931–1979.
Columbia Law Review, November, 1920, Vol. 20, No. 7, p. 776;
Sparks *v* Brown, Inc., 184 N. Y. Supp. 557.

“Sellers are not liable for any default or delay caused by any contingency beyond their control, of the control of their supplier or manufacturer, with whom they contract to cover this sale, or the manufacturer who is to furnish these goods, preventing or interfering with sellers making delivery, including war, restraints affecting shipping or credit, strike, lockout, accident, nonarrival or delay of steamer or carrier, floods, droughts, short or reduced supply of fuel or raw material, or excessive cost thereof, or of production over contracts basis, and other contingency affecting sellers or such suppliers or manufacturers, as to manufacture or supply or delivery, to or from sellers; subject also to force majeure conditions in contract or such suppliers or manufacturers. Sellers may deliver ratably with reference to all their customers and also their contracts with suppliers or manufacturers. Any delivery not made for any reason stated may be canceled at sellers' option.”

Clause Excusing Delivery for Shortage of Labor

Rosenstein et al. *v*. Farish Co., Inc., 185 N. Y. Supp. 42;
Krulewitch *v*. National Importing & Trading Co., 195 App.
Div. 544, 186 N. Y. Supp. 838.

“If production should be curtailed during the time above named by strikes, lockouts to counteract strikes, shortage of labor, or any casualty or accident or bankruptcy or insolvency, deliveries shall be made proportionate to the production.”

Compagnie de Trefleires *v*. F. & C. S. S. Co., 192 App.
Div. 709, 183 N. Y. Supp. 169;

“This contract is made subject to conditions of Act of Congress governing B’s/L approved February 13, 1893, and to terms B’s/L in use by steamer’s agents including attached War Clause, and is further conditional upon the continuance of the steamship company’s services and the sailing of its steamer and if at any time in the judgment of the steamship company conditions of war hostility actual or threatened as such to make it unsafe or unprudent for its vessels to sail, the sailing of any vessel or vessels may be postponed or cancelled and in that event the steamship company may at its option, cancel this contract and shall be relieved thereafter from any liability hereunder except the return to the shippers whatever cargo may have been already received under this contract.

“When and so long as a state of war exists between any two European powers, the ship owners and/or its agents and/or the master may at any time either before or after the commencement of the voyage, abandon the voyage in whole or in part, or alter or vary the proposed or advertised or agreed route, and the ship may before proceeding to port of final destination, proceed to any port or ports on any coast or coasts of Europe and/or of the British Isles, in any order, and whether to discharge and/or load passengers or cargo consigned to or from any such port or ports, or for any other purpose whatsoever, and neither the shipper nor the consignee nor the holder of the Bill of Lading shall have any claim against the ship-owner or his agents, or the master for any loss or damage which he may sustain directly or indirectly by reason of any of the matters herein provided for or by reason of any damage to or diminution in value of the goods in consequence thereof.”

Producers’ Coke Co. v. M’Keefrey Iron Co., 267 Fed. 22, 23.

In case of strike or combination of workmen, accidents or any other cause or causes unavoidable or beyond their control, causing a stoppage or partial stoppage of the works of either the producer or of the consumer of the coke hereby contracted for, or unavoidable delay in shipment, delivery of material hereby contracted for may be partially or wholly suspended (as the case may be) during the continuance of such interruption; such suspension, however, shall not in any wise invalidate this

contract, but on resumption of work the delivery shall be continued at the specified rate, and no liability shall be incurred by either buyer or seller for damages resulting from such suspension of shipments.

It is understood and agreed that if there should be a shortage of cars, shipments shall be divided from time to time in fair proportion on all orders.

Del., L. & W. R. R. Co. *v.* Bowns et al., 58 N. Y. 573.

“Every effort will be made by the company for the fulfillment of its contracts for the delivery of coal; but if at any time the business of the company is so interrupted by storms, floods, breaks, accidents, combinations, turnouts, strikes among miners, or other employees, or by any other occurrence whatsoever, as to materially decrease the quantity of coal which the company would otherwise have been able to obtain and deliver at Elizabethport, during the month in which the coal now sold is deliverable, the company will not hold itself liable for, or pay any damages sustained by reason of the non-delivery of the coal now sold, or of any portion thereof, although a portion of the coal that is received at Elizabethport during said month, may, in the usual course of the company’s coal sales and business, be disposed of otherwise than in the fulfillment of the contracts made by this sale; nor will the company, in case the coal now sold is not delivered, undertake a *pro rata* distribution among the respective purchasers of what is delivered; but in all cases of non-delivery from any of the above causes, the money paid on coal will be promptly refunded.”

Dauids Co. *v.* Hoffman LaRoche Chemical Works, 178 App. Div. 855, 166 N. Y. Supp. 179.

“Contingencies beyond our control, fire, strike, accidents to our works or to our stock, or change in tariff, will allow us to cancel this contract or any part of the same at our option.

B. P. Ducas Co. *v.* Bayer Co., 163 N. Y. Supp. 32, p. 34.

.....“Contract includes price guaranty. Terms as usual. Payable in U. S. Gold coin or in equivalent. Sellers not to be held accountable for delays caused by strikes or for any contingencies beyond their control, or other unavoidable accident such as fire, etc. In case of more than one shipment or delivery each shipment to be considered and treated as a separate sale or contract.....”

Cannistraci v. James Cheives & Co., 165 N. Y. Supp. 933, p. 934.

“Shipments to be made as soon as practicable after completion of pack. In event of short crop, fires, strikes, accidents, or other causes beyond seller’s control, deliveries to be made pro rata with other orders that may be entered at the time of delivery.”

Strike Clause

DeGrasse Paper Co. v. Northern N. Y. Coal Co., 190 App. Div. 227, 179 N. Y. Supp. 788.

“This contract is made subject to strikes, accidents, car supply, or other causes beyond the control of either party. The buyer and seller, recognizing the uncertainty of absolute deliveries, it is hereby mutually acknowledged that the intent of this agreement is not to hold either party for damages accruing through failure to carry out the contract when such failure is due to reasons beyond the control of the party in default, but that the material shall be shipped by the seller and accepted by the buyer as per deliveries specified, so far as the labor, the physical conditions existing at the plants of the buyer and seller, respectively, and the ability of transportation companies will permit.”

Clause Limiting Credit of Purchaser

Williston, Section 575.

Wilton v. Berger, 196 App. Div. 121, 187 N. Y. Supp. 487;

Lyonette v. K. Wilbur Dolson, 187 App. Div. 473, 175 N. Y. Supp. 789;

Melnick v. Borden, 185 N. Y. Supp. 305.

McLain, Etc., Co. v. Trent Rubber Co. 275 Fed. 831.

The Purchaser agrees that delivery of merchandise under this contract is subject to the credit limit placed upon the Purchaser's account by the Seller's credit department.

Clause Entitling Seller to Replace Defective Merchandise

Blue Ridge Knitting Co. v. Paulson, 266 Fed. 63.

"Any claim that the quality of goods is not in accordance with the terms of this contract or any reasonable delay in delivery due to conditions beyond our control, shall not constitute a cause for cancellation of this contract or any part thereof.

"We guarantee the yarn to be equal to the average running quality of the grade sold.

"Complaints as to the quality must be made to us in writing within 15 days from time of the delivery of any yarn, we retaining the privilege of replacing within a reasonable time any yarn agreed upon as not complying with this contract."

Clause Limiting Liability of Carrier for Negligence

Williston, Sections 1107-1111.

Boyle v. Bush Terminal, 210 N. Y. 389, 104 N. E. 933

(see also *Anderson v. Erie R. R. Co.*, 171 App. Div.

687, 157 N. Y. Supp. 740, affirmed 223 N. Y. 277, 119 N. E. 557).

"The consignor of this property has the option of shipping same at higher rate without limitation as to value in case of loss or damage from causes which would make the carrier liable, but agrees to the specified valuation named in case of

loss or damages from causes which would make the carrier liable, because of the lower rate thereby accorded for transportation."

Clause Requiring Payment of Minimum License Fee

Williston.

Patent license.

American Delinting Company *v.* Pomeraning, 274 Fed. 212.

"This license is granted upon condition that the Licensee, his heirs, executors, administrators, or assigns, shall well and truly cause to be paid to the Licensor, its successors or assigns, during each year for the full term of said respective patent, per cent. of the net profits derived from the manufacture and sale of the several devices and inventions enumerated and described in said United States letters patent No. and, less the proportionate share of governmental share of governmental and profit taxes, and which share of said net profits in no event shall be less than per annum after the year, such payment to be made in the manner following. On of each year a sworn statement shall be exhibited to the Licensor, its successors or assigns, giving the number of machines sold, and giving in detail a profit and loss statement of the business ending the preceding and payment of the sum or sums so determined to be due shall be made within days thereafter and in event of the default in such payment, for the period of days, this license may be forthwith revoked."

Promissory Note for Purchase Price of Merchandise with Provision that Title Shall Remain in Seller Until Note is Paid—Acceleration Clause

Williston—Sections 690, 787, 1137, 1171, 1182, 1830, 1831, 1902 and 2025.

Chicago Railway Equipment Co. *v.* Merchants National Bank of Chicago, 136 U. S. 268; 10 Sup. Ct. Rep. 999;

National Shoe & Leather Bank *v.* N. Y. Life Insurance & Trust Co., 33 App. Div. 629, 53 N. Y. Supp. 360.

(Date).....

\$.....

For value received.....after date.....
promises to pay to the order of.....
Dollars \$.....) at.....
with interest thereon at the rate of.....(.%)
 per annum.

This note is one of a series of notes of even date.....
 herewith of the sum of.....Dollars (\$.....) each
 and shall become due and payable to the holder on the failure
 of the maker to pay the principal and interest on any one of the
 notes of said series.

Said notes are given for the purchase price of.....sold
 by the payee to the maker, and it is agreed by the maker that
 title to said.....shall remain in the payee until all the
 notes of said series, both principal and interest, are fully paid.

Standard Form of Publishing Contract Approved and Published by Permission of the Authors' League of America

Williston, Sections 421, 841n, 1647, 1940, and 1980.

(As a "maximum" contract, this form is planned to include all those clauses and stipulations which any author might urge at one time or another for the full protection of his work. Practically every clause in this contract has at one time or another been included in an actual agreement arrived at between author and publisher.)

MEMORANDUM OF AGREEMENT, made this.....day of, 192., between.....of....., hereinafter called the Author, and....., hereinafter called the Publisher.

1. The Author hereby grants and assigns to the Publisher the sole and exclusive right to publish in book form a work now entitled.....(which title may be changed only by mutual consent in writing) in the United States of America and Canada.

2. It is understood and agreed that the copyright shall be taken out in the name of the Author, and the Publisher is hereby authorized to take all steps required to secure said copyright in the United States of America and in such other countries as may be covered by this agreement. The Author agrees to apply for the renewal of said copyright on the expiration of the first term thereof, and to assign to the Publisher the sole and exclusive right to publish the said work in book form as herein provided during the full term of said renewal, on the same terms and conditions as for the original copyright term, and the Publisher shall imprint proper copyright notice on every copy of the said work as required for the protection of said copyright.

3. The Author guarantees and represents that the said work is innocent and contains no matter libelous or otherwise unlawful, that he is the sole author and proprietor of the said work and has full power to make this agreement and grant, and that he will hold harmless the Publisher against any suit, claim, demand or recovery finally sustained, by reason of any

violation of proprietary right or copyright by, or any unlawful matter contained in the said work.

4. The Author agrees to deliver to the Publisher on or before the.....day of....., 192., a complete copy of the said work in its final form. The Publisher agrees to submit galley and page proofs of said work to the Author which proofs the Author agrees to return to the Publisher within.....days of receipt thereof.

5. Each party to this contract further agrees that for a period of.....after publication of said work he will not publish or offer for publication any work of a competing character without the written consent of the other.

6. If the Author shall request alterations in any proofs other than those due to printers' errors which shall cost more than fifteen (15%) per cent of the cost of composition of the said work, the Author agrees to pay said excess, and the Publisher shall upon request inform the Author of the amount of such excess charges.

7. The Publisher undertakes to publish the said work without changes or eliminations in or from the text, at his own expense in such styles as he deems best suited to its sale, at a catalogue retail price of not less than \$. nor more than \$. cloth style, and at a time not to exceed one (1) year after the receipt by him of a complete manuscript of the said work ready for the press and released for book form publication and should the Publisher fail to publish the said work before the expiration of said period, this agreement shall terminate. In case there shall during the existence of this agreement be planned a uniform edition of the Author's works the Publisher shall permit the inclusion of the said work provided said uniform edition is sold only in complete sets by subscription; and he agrees not to demand a larger share of the profits of the sale of each copy of said work in said uniform edition than he receives on the sale of regular editions.

8. The Author agrees without charge therefor to revise every subsequent edition of the work during the continuance of this agreement, if such revision is deemed by the Publisher necessary in order to keep the work up to date. But in case the Author refuses to make such revision the Publisher may

employ a competent person to revise said work and may deduct the expense of such revisions from royalties accruing on such revised editions.

9. The Publisher agrees to pay to the Author or to his duly authorized representative, per cent on the catalogue retail price for each copy of said work sold up to and including copies and agrees to pay per cent on all copies sold over and up to and per cent on all copies sold thereafter. On receipt of the Manuscript in final form and ready for publication the Publisher agrees to pay to the Author or to his duly authorized representative \$. in advance on account of royalties. Where copies are exported to Canada at reduced price, or when copies are sold in quantities sufficient to justify special discounts of 50 per cent of the retail price or more, the royalty shall be calculated on the sums actually received instead of on the regular retail trade price of the work. No royalties shall be payable on copies furnished gratis to the Author, or on copies given away gratis for the furtherance of sales, or on copies destroyed by fire or water.

10. The Publisher agrees to render semiannual statements of account to and of each year, on and following, which statements shall be mailed to the last known address of the Author, and if such statements fail to reach the Author to furnish duplicate statements on request, and to make settlement in cash on and The statements shall show in detail the number of copies printed, the number sold, the number spoiled, the number given away for review, the number sold in Canada and the number on hand.

11. The Publisher agrees to present to the Author free copies of the said work upon publication and to permit the Author to purchase at the lowest trade price further copies for his own personal use.

12. It is understood and agreed that years from the date of publication of the work the Publisher may publish under his own imprint a "cheap" edition of said work and that he shall pay to the Author in consideration for said right ten per cent of the retail price of each copy sold of said edition

and the Publisher shall also have the right to lease the plates of said work to a regular "cheap" edition publisher and in consideration for this right he shall pay the Author promptly as and when received one-half of any amount paid to him by said reprint publishers. Payments and accountings under this clause in the event that the "cheap" edition is published by the Publisher shall be subject to the provisions of clause 10 hereof.

13. In case the Publisher fails to keep the said work in print and for sale and after written demand from the Author declines or neglects to print the work within.....and to offer it for sale, or in case after.....years from the date of first publication, the said work, in the opinion of the Publisher is no longer merchantable or profitable, and he gives three months' notice to the Author of his desire and intention to discontinue publication, this contract shall terminate and all rights granted under this agreement shall revert to the Author together with any existing property originally furnished by the Author at his expense. The Publisher shall grant to the Author the right to purchase the plates of the work or any remaining copies or sheets at a price not to exceed.....per cent of the manufacturing cost (including composition) of such plates and.....per cent of the manufacturing cost of any remaining copies or sheets, in default of which purchase the Publisher shall have the right to melt any plates and sell remaining copies or sheets at cost or less, without payment of royalty to the Author upon such sales.

14. If the plates or type forms of said work shall be destroyed or rendered valueless by fire or otherwise the Publisher shall have the option of reproducing them or not, and if he declines to do so, then this contract shall terminate and all rights granted herein shall revert to the Author.

15. In case of bankruptcy (or liquidation for any cause whatever) of the Publisher, the right of publication shall revert to the Author and the Author shall have the right to buy back any plates and remaining copies or sheets at a fair market value, to be determined by agreement or arbitration, and thereupon this contract shall terminate.

16. The Author shall have the right upon written request to examine through certified public accountants the books of

account of the Publisher in so far as they relate to the said work, which examination shall be at the cost of the Author unless errors of accounting (arising otherwise than from interpretation of this contract) amounting to five per cent of the total sums paid the Author shall be found to his disadvantage in which case, the cost shall be paid by the Publisher.

17. In case any disagreement arises between the said Author and the said Publisher as to the interpretation of the terms of this agreement or as to any questions relating to the handling of said work not covered in this agreement, the parties hereto agree to settlement by arbitration according to the rules therefor provided by the Authors' League of America.

18. All rights, now existent or which may hereafter come into existence except those hereinbefore specifically granted to the Publisher are hereby reserved to the Author.

19. If the Publisher should at any time during the existence of this agreement fail to comply with or fulfill any of the terms or conditions thereof, time being expressly made of the essence of this agreement, then or in any of these events, this agreement shall become null and void at the option of the Author, said option to be exercised by the Author in writing and by registered mail and thereupon all rights granted by the Author to the Publisher shall forthwith terminate and revert to him and any payment which may have been made to the Author under this agreement shall remain his absolute property, all however, without prejudice to any rights which the Author may have as against the Publisher.

20. A waiver of any breach of this agreement or of any of the terms or conditions thereof shall not be deemed a waiver of any repetition of such breach or in any wise to affect any other term or condition of this agreement and no waiver shall be valid or binding unless the same shall be in writing and signed by the Author.

21. This contract shall be binding upon the assigns or successor of the Publisher, but no assignment shall be binding on either of the parties without the written consent of the other party to this agreement.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals.

Architect's Agreement on Cost plus Basis

AGREEMENT made between hereinafter referred to as the Owner, and hereinafter referred to as the Architect, as follows:

1. *The Work Contemplated.* The work for which the Architect is to render professional services under this agreement consists of the planning and construction of, estimated by the Architect to cost about This agreement, however, will not be affected by any change in the final actual cost of the building, unless it is due to a substantial increase in the requirements.

2a. The Architect shall render complete professional services, consisting of such conferences, preliminary studies, working drawings, specifications, large scale and full size detail drawings as may be necessary, together with the supervision of the letting of the work. The charges noted below under "Architect's Salary," are for the personal professional services of the Architect. The expense of draughting, engineers' incidentals and superintendence will be paid by the Owner in addition to such salary, as noted below under "Additional Charges." The Architect will furnish ten typewritten copies of the specifications or copy for the printer, if printed.

b. The Architect shall in person, or by representatives give such superintendence to the work during construction as may be required to insure the work being executed in general conformity with the plans and specifications, and such further instructions as may be given from time to time. This superintendence cannot prevent poor workmanship or the use of poor materials, but can require the making good of such defects as appear in the work, so far as practicable.

3. *Architect's Salary.*

a. If the work as contemplated at this time is carried on steadily to completion, it is estimated that the Architect's services will terminate in months from On this basis the Architect shall receive a total salary of The amount shall be paid as follows: a month for months, payments beginning 192.,

final balance of to be paid on issuance of final certificate to the contractor.

b. If for reasons beyond the control of the Architect, the work is delayed so as to extend over a period materially in excess of that contemplated, as noted above, and so as to entail additional service on his part, then the total amount of the Architect's salary shall be increased by an amount to be mutually agreed upon by the Owner and Architect.

c. The Owner may at any time abandon or suspend the work and the employment of the Architect shall thereupon terminate if the work is abandoned, and be suspended, if the work is suspended.

d. If the undertaking is abandoned and the employment of the Architect consequently terminated, he shall be paid in addition to this salary to the date of such termination, the unpaid balance of due at completion.

e. If the work is suspended at any time so as to suspend also the work of the Architect, the Owner shall be at liberty to suspend payments on the Architect's salary until his work is resumed, without affecting otherwise the terms of this agreement.

4. *Additional Charges.* In addition to the Architect's salary determined above, there will be the following items of expense to be paid by the Owner through the Architect.

a. *Draughting.* Strict account shall be kept by the Architect of the cost of draughting, such cost to be the total of the salaries paid to draughtsmen engaged on the drawings, or in superintendence, including time so spent in writing specifications, but no charge is to be made for time so spent by the Architect, and all expense of stenographic work on specifications or otherwise, done in the Architect's office, are to be considered as "regular office expense." No charge shall be paid for superintendence on the part of the Architect. The total amount of such draughting expense shall be multiplied by two to cover the proportionate share of regular office expenses, and this resulting amount shall be paid monthly on statements in detail from the Architect. The total expense under this item is estimated at

b. *Engineers.* The services of structural, domestic and

sanitary engineers shall be paid for through the Architect at cost. Expense under this item is estimated as follows:

Structural Engineers,
Domestic Engineers,
Total,

c. *Incidentals.* Incidental expenses in connection with the work such as blue printing, travelling expenses, models, long-distance telephone, telegraph, express and other miscellaneous charges directly applicable to this work including printing of specifications, if they be printed, shall be paid at cost on monthly statements from the Architect. Total expense under this item is estimated at.....

d. *Clerk of the Works.* A clerk of the works satisfactory to the Architect shall be employed by the Owner if he deems it desirable, and paid for through the Architect at cost. The clerk of the works shall be the representative of the Owner and of the Architect, and shall report to the Owner through the Architect as directed by him. If a clerk of the works is employed the total expense under this item is estimated at

5. *Survey Borings and Tests.* The Owner shall furnish the Architect with a complete and accurate survey of the building site, giving the grades and lines of streets, pavements, and adjoining properties; the rights, restrictions, boundaries and contours of the building site, and full information as to sewer, water, gas and electrical service. The Owner is to pay for test borings or pits and for chemical, mechanical or other tests when required.

6. *Preliminary Estimates.* When requested to do so, the Architect will make or procure preliminary estimates on the cost of the work and he will endeavor to keep the actual cost of the work as low as may be consistent with the purpose of the building and with proper workmanship and material, but no such estimate can be regarded as other than an approximation.

7. *Ownership of Documents.* Drawings and specifications as instruments of service are the property of the Architect whether the work for which they are made be executed or not.

8. *Successors and Assignment.* The Owner and the Archi-

tect, each binds himself, his successors, executors, administrators, and assigns to the other party to this agreement, and to the successors, executors, administrators and assigns of such other party in respect of all the covenants of this Agreement.

The Architect shall have the right to join with him in the performance of this agreement, any architect or architects with whom he may in good faith enter into partnership relations. In case of the death or disability of one or more partners, the rights and duties of the Architect, if a firm, shall devolve upon the remaining partner or partners or upon such firm as may be established by him or them, and he, they or it, shall be recognized as the "successor" of the Architect, and so on until the service covered by the agreement has been performed. The Owner shall have the same rights, but in his case no limitation as to the vocation of those admitted to partnership is imposed. Except as above neither the Owner nor the Architect shall assign, sublet or transfer his interest in this agreement without the written consent of the other.

9. *Summary.* The summary of the items as above is as follows:

3. Salary
4. a. Draughting
- b. Engineers
- c. Incidentals
- d. Clerks of the works

IN WITNESS of the above &c. &c.

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